

CITY OF SAN DIEGO

TELECOMMUNICATIONS LICENSE AGREEMENT

(North County Dispatch Joint Powers Authority: Mt. Woodson Communications Complex)

This TELECOMMUNICATIONS LICENSE AGREEMENT (this "**License Agreement**") is entered into as of the Effective Date by and between NORTH COUNTY DISPATCH JOINT POWERS AUTHORITY, a California joint exercise of powers authority ("**Licensee**"), and THE CITY OF SAN DIEGO, a California municipal corporation ("**City**").

IN CONSIDERATION OF THE PROMISES OF LICENSEE AND CITY SET FORTH IN THIS LICENSE AGREEMENT AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE ACKNOWLEDGED, LICENSEE AND CITY AGREE AS FOLLOWS:

1. **PURPOSE.** City owns certain real property commonly known as City's "Mt. Woodson Communication Complex" located in the County of San Diego, and specifically defined in Section 2.47 as the "Property." Licensee and City desire to enter into this License Agreement to provide Licensee certain rights to operate and maintain Communications Equipment (defined in Section 2.12) within a specifically designated area of the Property.

2. **DEFINITIONS.** All defined terms or words indicated by initial capitalization in this License Agreement are defined in this Section 2 as follows:

2.1 Access Road. The road described in **EXHIBIT J** attached to this License Agreement.

2.2 Adjustment Date. Defined in Section 7.7.

2.3 Application. Excluding this License Agreement, any agreement, application, certificate, document, or submission (or amendment of any of the foregoing): (a) necessary or appropriate for improvement of the License Area or installation of any Communications Equipment on the License Area, including any application for any land use entitlement, building permit, certificate of occupancy, utility service or hookup, easement, covenant, condition, restriction, subdivision, or such other instrument as Licensee may reasonably request in compliance with the Site Plan; or (b) to enable Licensee to seek any Approval or to use or operate Licensee's Communications Equipment located on the License Area in accordance with this License Agreement and Law.

2.4 Approval. Excluding this License Agreement, all licenses, permits (including building, grading, demolition, alteration, use and special permits), approvals, consents, certificates, rulings, variances, authorizations, conditional use permits, or amendments to any of the foregoing, necessary or appropriate under any Law to commence, perform, or complete improvement of the License Area or installation of any Communications Equipment on the License Area.

2.5 Bankruptcy Proceeding. Any proceeding, whether voluntary or involuntary, under Title 11, United States Code, or any other or successor State or Federal statute relating to

assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters.

2.6 Business Day. Any weekday on which City is open to conduct regular City functions with City personnel.

2.7 City. The City of San Diego, California, a municipal corporation.

2.8 City Access Road. The portion of the Access Road located on City-owned real property.

2.9 City Parties. Collectively, City, the City Council, and all City elected officials, employees, agents, and attorneys.

2.10 City Party. Individually, City, the City Council, and each City elected official, employee, agent, or attorney.

2.11 Claim. Any claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity, or otherwise, or foreseeable or unforeseeable), charge, award, assessment, fine or penalty of any kind (including reasonable consultant fees, expert fees, expenses or investigation costs of whatever kind or nature, and Legal Costs) and any judgment.

2.12 Communications Equipment. All antennas, equipment, cable wiring, utility lines, transmission lines, air-conditioned equipment shelters, back-up power sources, and related equipment and fixtures described in the Site Plan for installation in the License Area by Licensee.

2.13 Control. Possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether by ownership of Equity Interests, by contract or otherwise.

2.14 County. The County of San Diego, California.

2.15 Default. Any Monetary Default or Non-Monetary Default.

2.16 Default Interest. The lesser of eight percent (8%) annually or the maximum rate allowed by Law.

2.17 Effective Date. The date this License Agreement is approved as to form by the San Diego City Attorney as shown on the signature page to this License Agreement.

2.18 Environmental Condition. Any of the following events relating to the Property and arising from Licensee's Operations, any action by a Licensee Party, or any failure to act by a Licensee Party that had a duty to act: (a) an actual or alleged violation of any Environmental Law; or (b) a Hazardous Substance Discharge.

2.19 Environmental Law. All Federal, State, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any Government, now in effect

or enacted after the Effective Date, regulating, relating to, or imposing liability or standards of conduct concerning: (a) any Hazardous Substance; (b) occupational health or industrial hygiene (only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate to Hazardous Substances on, under or about the Property or Licensee's Operations); (c) occupational or environmental conditions on, under or about the Property or Licensee's Operations; (d) or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water or land use.

2.20 Equity Interest. Any equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest, or other interest of an ownership or equity nature) in a Person.

2.21 Event of Default. The occurrence of any one or more of the following:

2.21.1 *Monetary Default*. A Monetary Default continuing for thirty (30) days after Notice from the non-defaulting Party, specifying in reasonable detail the amount of money not paid, including the nature and calculation of each such amount, or the evidence of insurance not delivered;

2.21.2 *Bankruptcy or Insolvency*. A Party ceases to pay its debts as they become due, or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within one hundred twenty (120) days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all the Party's assets or the Party's interest in this License Agreement (unless such appointment, attachment, execution, or other seizure was involuntary, and is contested with diligence and continuity and vacated and discharged within one hundred twenty (120) days after being made);

2.21.3 *Licensee Transfer*. The occurrence of a Transfer, whether voluntarily or involuntarily or by operation of Law, in violation of Section 24;

2.21.4 *Non-Monetary Default*. Any Non-Monetary Default, other than those specifically addressed in Section 2.21.2 or 2.21.3, that is not cured within thirty (30) days after Notice to the Party in Default describing the Non-Monetary Default in reasonable detail. In the case of a Non-Monetary Default that cannot with reasonable diligence be cured within thirty (30) days after the date of such Notice, the Party in Default shall not be in Default if it does all the following: (a) within thirty (30) days after Notice of such Non-Monetary Default, advise the other Party of the intention of the Party in Default to take all reasonable steps to cure such Non-Monetary Default; and (b) commence and complete such cure within a reasonable time under the circumstances.

2.22 Exclusive Use Area. The part of the Property specifically described as "Exclusive Use Area" in **EXHIBIT B** attached to this License Agreement.

2.23 Federal. Relating to or under the authority of the federal government of the United States of America.

2.24 Government. All courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever of any governmental unit (Federal, State, County, district, City, or otherwise), whether in existence on the Effective Date or subsequently established having jurisdiction over either Party, the Property, Communications Equipment, or Licensee's Operations.

2.25 Hazardous Substance. Any flammable substance, explosive, radioactive material, asbestos, asbestos-containing material, polychlorinated biphenyl, chemical known to the State to cause cancer or reproductive toxicity, pollutant, contaminant, hazardous waste, medical waste, toxic substance or related material, petroleum, petroleum product or any "hazardous" or "toxic" material, substance, or waste defined by those or similar terms or regulated as such under any Law, any matter, waste, or substance subject to any Law regulating, relating to, or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property, or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor, or any form of energy, from whatever source.

2.26 Hazardous Substance Discharge. Any deposit, discharge, generation, release, or spill of a Hazardous Substance occurring at on, under, into or from the Property, or during transportation of any Hazardous Substance to or from the Property or arising at any time from activities conducted at on, under or from the Property, whether or not caused by a Party.

2.27 Indemnify. Indemnify, defend, and hold harmless the specified Person(s) from and against the Claim (alleged or otherwise), including any and all loss, cost, claims, liability, penalties, judgments, damages and other injury, detriment, or expense (including Legal Costs, interest, and penalties) the Person suffers or incurs: (a) from, as a result, or on account of the Claim; or (b) in enforcing the indemnitor's indemnity obligation regarding the Claim.

2.28 Insurance Requirements. Defined in **EXHIBIT C** (Section 2) attached to this License Agreement.

2.29 Law. Every law, ordinance, requirement, order, proclamation, directive, rule or regulation of any Government applicable to either Party, the Property or Licensee's Operations, including any development, use, maintenance, taxation, operation, occupancy of, or Hazardous Substances or other environmental condition affecting the Property, or otherwise relating to this License Agreement or any Party's rights, obligations or remedies under this License Agreement, whether in force on the Effective Date or passed, enacted, modified, amended or imposed at some later time, subject in all cases, however, to any applicable waiver, variance, or exemption.

2.30 Legal Costs. In reference to any Person, all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including reasonable attorneys' fees, court costs and expenses, and reasonable consultant and expert witness fees and expenses.

2.31 License Area. Collectively, the Exclusive Use Area and the Non-Exclusive Use Area.

2.32 Licensee. North County Dispatch Joint Powers Authority, a California joint exercise of powers authority.

2.33 License Fee. The following table shows the annual License Fee amount for each Year (The following License Fee schedule reflects an annual License Fee escalation equal to three percent (3%) above the annual License Fee for the immediately preceding Year); provided that: (a) the License Fee for the period between the Effective Date and the immediately succeeding June 30th shall be prorated to the amount determined by multiplying the License Fee for Year 1 by the percentage calculated by dividing the actual number of days in such period by 365; and (b) in each of Year 6 through Year 10, the annual License Fee amount may be increased based on an appraisal in accordance with Section 7.7:

Year 1	\$31,320.00
Year 2	\$32,259.60
Year 3	\$33,227.39
Year 4	\$34,224.21
Year 5	\$35,250.94
Year 6	Greater of \$36,308.46 or Market Appraisal amount
Year 7	Greater of \$37,397.72 or Market Appraisal amount
Year 8	Greater of \$38,519.65 or Market Appraisal amount
Year 9	Greater of \$39,675.24 or Market Appraisal amount
Year 10	Greater of \$40,865.50 or Market Appraisal amount

2.34 Licensee's Operations. Installing, constructing, modifying, maintaining, repairing, operating, upgrading, or removing, all at Licensee's sole cost and expense, Licensee's Communications Equipment in accordance with this License Agreement.

2.35 Licensee Parties. Collectively, Licensee, its directors, officers, members, partners, employees, agents, contractors, attorneys, and any other Person whom Licensee authorizes or allows to enter the License Area.

2.36 Licensee Party. Individually, Licensee, its directors, officers, members, partners, employees, agents, contractors, attorneys, or other Person who Licensee authorizes or allows to enter the License Area.

2.37 Mayor. The Mayor of City or his or her designee or successor in function.

2.38 Monetary Default. Any failure by a Party to pay or deposit, when and as this License Agreement requires, any amount of money required to be paid or evidence of any

insurance coverage required to be provided under this License Agreement, whether to be paid or provided to a Party or a Third Person.

2.39 Non-Exclusive Use Area. That part of the Property specifically described as "Non-Exclusive Use Area" in **EXHIBIT B** attached to this License Agreement.

2.40 Non-Monetary Default. The occurrence of any of the following events, except to the extent constituting a Monetary Default: (a) any failure of a Party to perform any of its obligations under this License Agreement; (b) any failure of a Party to comply with any material restriction or prohibition in this License Agreement; or (c) any other event or circumstance that, with passage of time or giving of Notice, or both, would constitute a breach of this License Agreement.

2.41 Notice. Any consent, demand, designation, election, notice, or request relating to this License Agreement. All Notices must be in writing.

2.42 Notify. To give a Notice.

2.43 Parties. Collectively, City and Licensee.

2.44 Party. Individually, either City or Licensee, as applicable.

2.45 Person. Any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind.

2.46 Primary Use. Defined in Section 3.3.

2.47 Property. That certain real property owned by City specifically described in **EXHIBIT A** attached to this License Agreement.

2.48 Qualified Appraiser. A State Certified General Real Estate Appraiser who is confirmed by City as being competent in determining market fees or rents for telecommunications sites.

2.49 Relocated License Area. Defined in Section 8.

2.50 RF. Defined in Section 10.1.

2.51 SDMC. Defined in Section 3.7.

2.52 Sign. Defined in Section 9.5.

2.53 Site Plan. The site plan in **EXHIBIT B** attached to this License Agreement.

2.54 State. The State of California.

2.55 Term. Defined in Section 17.

2.56 Termination Date. Defined in Section 17.

2.57 Third Person. Any Person that is not a Party, an affiliate of a Party, a City Party, or a Licensee Party.

2.58 Transfer. Any of the following events, whether occurring by operation of law or otherwise, voluntarily or involuntarily, or directly or indirectly: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale, or other transfer, whether direct or indirect, of all or any part of Licensee's legal, beneficial, or equitable interest in this License Agreement; (b) any conversion, exchange, issuance, modification, reallocation, sale, or other transfer of any direct or indirect Equity Interest(s) in Licensee by the owner(s) of such Equity Interest(s); (c) any transaction described in clause "(b)" affecting any Equity Interest(s) or any owner of Equity Interests (or in any other direct or indirect owner at any higher tier of ownership) through any manner or means whatsoever; or (d) any transaction that is in substance equivalent to any of the foregoing. A transaction affecting Equity Interests, as referred to in clauses "(b)" through "(d)," shall be deemed a Transfer by Licensee even though Licensee is not technically the transferor. A "Transfer" shall not, however, include any of the foregoing (provided that the other party to this License Agreement has received Notice of such event) relating to any Equity Interest: (a) that constitutes a mere change in form of ownership with no material change in beneficial ownership and constitutes a tax-free transaction under federal income tax law and the State real estate transfer tax; or (b) to any Person that, as of the Effective Date, holds an Equity Interest in, or is under common control with, the Person whose Equity Interest is being transferred.

2.59 Unavoidable Delay. A delay in either Party performing any obligation under this License Agreement arising from or on account of any cause whatsoever beyond the Party's reasonable control, including strike, labor trouble or other union activity, casualty, war, act of terrorism, riot, litigation, Government action, regional natural disaster, pandemic, or inability to obtain materials. Unavoidable Delay shall not include delay caused by a Party's financial condition, illiquidity, or insolvency.

2.60 Year. Each of: (a) the time period beginning on the Effective Date and continuing through the day before the immediately following anniversary of the Effective Date (Year 1); and (b) every subsequent period of twelve (12) months beginning on each anniversary of the Effective Date and ending on the day before the immediately following anniversary of the Effective Date (Years 2 through 10). Each Year is referred to in this License Agreement in consecutive chronological order, starting with "Year 1" and continuing with "Year 2," "Year 3," etc.

3. LICENSES.

3.1 License Area. Subject to the terms, conditions, and agreements of this License Agreement, as of the Effective Date, City licenses, permits and authorizes Licensee to use the Non-Exclusive Use Area on a non-exclusive basis and the Exclusive Use Area on an exclusive basis, in each case solely for Licensee's Operations.

3.2 License Area Access. Subject to the terms, conditions, and agreements of this License Agreement, as of the Effective Date, City licenses, permits and authorizes Licensee to enter the Property on a non-exclusive basis to access the License Area.

3.3 Property's Primary Use. The primary use of the Property is as City's Mt. Woodson Communications Complex for City wireless communications facilities and services ("**Primary Use**"). The Primary Use is superior to any rights provided under this License Agreement. Licensee's Operations may not interfere with the Primary Use. Throughout the Term, subject to the terms and conditions of this License Agreement, the License Area shall have the secondary purpose of accommodating Licensee's Operations that do not interfere with the Primary Use, including any disruption of safe access to City facilities or adverse impact on the cost of maintaining City facilities; provided, however, that any construction, maintenance or repair activities conducted in compliance with this License Agreement shall not constitute interference with the Primary use. If City determines that Licensee's Operations interfere with the Primary Use, City shall Notify Licensee and Licensee shall have seventy-two (72) hours to eliminate the interference with the Primary Use. Licensee's failure to eliminate the interference with the Primary Use within these seventy-two (72) hours, will be an Event of Default by Licensee and, in addition to exercising any other rights or remedies regarding such Event of Default, City may take all action required to eliminate the interference of Licensee's Operations with the Primary Use. If City performs work to eliminate the interference of Licensee's Operations with the Primary Use, Licensee shall reimburse City for all costs and expenses reasonably incurred by City in performing such work (including the costs of City's staff time, administrative overhead, and Legal Costs), within sixty (60) days after Notice to Licensee of such costs, which Notice shall include reasonable supporting documentation. Any amount reimbursable to City by Licensee under this Section 3.3 that is not paid within sixty (60) days after such Notice to Licensee of such amount, shall accrue Default Interest until paid.

3.4 Personal Rights. The licenses, permits and authorizations provided by this License Agreement are personal to Licensee and Transfers are limited under Section 24.

3.5 No Limitation on Other City Use. Nothing contained in this License Agreement is intended to limit, restrict, or prohibit City from entering into future agreements with other Persons regarding use of the Property, as long as such other use does not materially interfere with Licensee's Operations on the License Area.

3.6 No Property Estate or Interest Conveyed. Notwithstanding any provision of this License Agreement to the contrary, City and Licensee do not intend to convey any estate or interest in real or personal property between them under this License Agreement and nothing in this License Agreement shall be construed or interpreted as a conveyance of any estate or interest in any real or personal property. If this License Agreement or any provision of this License Agreement is finally (after all appeals) construed or interpreted by a court of competent jurisdiction as conveying an estate or interest in real or personal property between City and Licensee, then the provisions of this License Agreement interpreted as conveying any estate or interest in real or personal property between City and Licensee shall automatically be null and void, without further action by or Notice to City or Licensee.

3.7 Noise. Licensee shall not use or permit the use of the License Area in any manner that creates or maintains any noise or sound violating San Diego Municipal Code ("**SDMC**") Chapter 5, Article 9.5.

3.8 No Nuisance. Licensee shall not create or allow a nuisance, as defined in California Civil Code section 3479, or a violation of Law on the License Area.

3.9 Continuous Operation. If Licensee's Communications Equipment is removed from the License Area or not operational for more than ninety (90) days, subject to extension for an Unavoidable Delay, City may, in its sole discretion, terminate this License Agreement immediately by Notice to Licensee.

3.10 Competent Management. Throughout the Term, Licensee shall provide competent management of Licensee's Operations to the reasonable satisfaction of City. For purposes of this Section 3.10, "**competent management**" means demonstrated ability in the management and operation of wireless communication facilities and related activities in a fiscally responsible manner and in accordance with industry standards.

3.11 Accident Reports. Licensee shall immediately, or as soon as practicable and not more than seventy-two (72) hours after Licensee becomes aware of any accident causing property damage or injury to any Person on or around the Property and in which a Licensee Party, Licensee's Operations, or Communications Equipment, at is involved, report to City the names and addresses of the Person(s) involved, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and all other pertinent information.

3.12 Financial Records. Licensee shall maintain, in accordance with industry standards and generally accepted accounting principles, complete and accurate financial records showing all revenues and expenses relating to Licensee's Operations on the License Area. Licensee shall make these financial records available to City for inspection at a reasonable location in the County and at a reasonable time (during business hours), so that City can determine Licensee's compliance with this License Agreement, before or after the Termination Date, City shall have the right to review, and Licensee shall maintain, all financial records and accounts of Licensee Parties relating to Licensee's Operations on the License Area for five (5) years after the Termination Date. This Section 3.12 shall survive the Termination Date.

4. ACCESS ROAD.

4.1 Disclosure. A portion of the Access Road crosses certain real property owned by the County. The City and its lessees/licensees have been using the portion of the Access Road located on County-owned real property to access the Property for more than 25 years. The City is in the process of requesting an access easement from the County for the portion of the Access Road located on County-owned real property. However, the City cannot provide any assurance that the City will obtain the requested easement from the County, if the City does obtain the requested easement, when it will obtain the easement, or whether before the City obtains the requested easement the County may temporarily or permanently prevent the City or its lessees/licensees from using the portion of the Access Road located on County-owned real property.

4.2 Non-Exclusive License. Subject to the terms, conditions, and agreements of this License Agreement, as of the Effective Date, City licenses, permits and authorizes Licensee to use

the City Access Road on a non-exclusive basis solely to access the License Area for Licensee's Operations, subject to the following conditions:

4.2.1 The Licensee Parties shall use the Access Road at their sole risk and subject to Section 6;

4.2.2 The Licensee Parties shall avoid using the Access Road, to the extent possible, during weather conditions that may result in damage to the Access Road surface.

4.2.3 Licensee shall, at Licensee's sole cost and expense, promptly repair all abnormal or excessive damage caused to the City Access Road by the Licensee Parties, including road surface protective features such as water bars, drains, berms, or culverts.

4.2.4 Licensee shall provide locks for any gates crossing the Access Road. Gate locks shall be placed in a manner (like a "daisy chain" or other system approved by City) that will continue to allow City and others authorized by City to enter and traverse the Access Road and the Property.

5. MAINTENANCE EXPENSE SHARING. Licensee shall pay a portion of the maintenance expenses for the Property each Year under the terms of **EXHIBIT K** attached to this License Agreement.

6. ACCEPTANCE OF PROPERTY AND ACCESS ROAD IN AS-IS CONDITION. LICENSEE ACCEPTS ALL PHYSICAL CONDITIONS OF THE PROPERTY AND THE ACCESS ROAD, AS OF THE EFFECTIVE DATE, AND RELEASES CITY FROM ANY LIABILITY WHATSOEVER FOR ANY AND ALL KNOWN OR UNKNOWN CONDITIONS OF THE PROPERTY OR THE ACCESS ROAD. LICENSEE SHALL ENTER THE PROPERTY AND THE ACCESS ROAD FOR THE LICENSEE'S OPERATIONS UNDER THIS LICENSE AGREEMENT IN THE PROPERTY'S AND THE ACCESS ROAD'S "AS IS," "WHERE IS" AND "SUBJECT TO ALL FAULTS" CONDITION, AS OF THE EFFECTIVE DATE. LICENSEE ACKNOWLEDGES AND AGREES THAT IT IS RELYING SOLELY UPON ITS OWN KNOWLEDGE OR INVESTIGATION OF THE PROPERTY AND THE ACCESS ROAD, AS IT DEEMS APPROPRIATE. LICENSEE IS NOT RELYING ON ANY STATEMENT OR REPRESENTATION BY ANY CITY PARTY RELATING TO THE CONDITION OF THE PROPERTY OR THE ACCESS ROAD. WITHOUT LIMITING THE FOREGOING PROVISIONS OF THIS SECTION 6, CITY MAKES NO REPRESENTATION OR WARRANTY AS TO THE PHYSICAL CONDITION OF THE PROPERTY OR THE ACCESS ROAD OR WHETHER THE PROPERTY OR THE ACCESS ROAD COMPLIES WITH ANY LAW. WITHOUT LIMITING THE FOREGOING PROVISIONS OF THIS SECTION 6, LICENSEE, ON BEHALF OF ITSELF AND ITS SUCCESSORS AND ASSIGNS, WAIVES AND RELEASES CITY AND ITS SUCCESSORS AND ASSIGNS FROM ALL COSTS OR EXPENSES WHATSOEVER (INCLUDING LEGAL COSTS), WHETHER DIRECT OR INDIRECT, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, ARISING FROM OR RELATING TO THE PHYSICAL CONDITION OF THE PROPERTY OR THE ACCESS ROAD OR COMPLIANCE OF THE PROPERTY OR THE ACCESS ROAD WITH ANY LAW. LICENSEE EXPRESSLY WAIVES ALL RIGHTS OR BENEFITS AVAILABLE TO IT WITH RESPECT TO THE RELEASES CONTAINED IN THIS SECTION

payments under this License Agreement on or before each applicable due date, regardless of whether or not City invoiced the required payment.

7.4 No Offsets. Licensee shall pay all License Fees without offset, defense, claim, counterclaim, reduction, or deduction of any kind whatsoever.

7.5 City's Net Return. The License Fees shall give City an absolutely "net" return for the Term, free of any expenses or charges for the License Area, except as this License Agreement expressly provides.

7.6 Delinquent License Fees. If Licensee fails to pay the License Fee when due, Licensee shall pay, in addition to the unpaid License Fee, five percent (5%) of the delinquent License Fee. If the License Fee is still unpaid at the end of thirty (30) days past due, Licensee shall pay an additional five percent (5%) (being a total of ten percent (10%) of the delinquent License Fee, which is agreed by the Parties to be the appropriate amount to compensate City for the cost of servicing the delinquent account. In no event shall the charge for late payment of the License Fee be less than Twenty-Five Dollars (\$25). Acceptance of late charges or any portion of the late License Fee payment by City shall neither constitute a waiver of Licensee's Default regarding the late payment nor prevent City from exercising any rights or remedies available under this License Agreement, at law, or in equity arising from such Default.

7.7 Market Rate Adjustment. Effective as of the first day of Year 6 ("**Adjustment Date**"), the annual License Fee amount shall be increased to equal the greater of: (a) one hundred three percent (103%) of the annual License Fee for Year 5; or (b) the then existing market rate as determined by an appraisal. The appraisal shall be performed by a Qualified Appraiser under the Uniform Standards of Professional Appraisal Practice. Licensee shall pay for the services of such appraiser (other than a City staff appraiser) in determining the market rate License Fee amount as of the Adjustment Date. In establishing the market License Fee amount, the appraiser shall prepare the appraisal not more than six (6) months before the Adjustment Date by surveying comparable market charges, fees, or rents for similar facilities in Southern California or other comparable market areas. If Licensee reasonably disagrees with the first appraiser's market rate License Fee opinion, the Licensee may, at its sole cost, hire a second Qualified Appraiser acceptable to City to provide another opinion of the market rate License Fee as of the Adjustment Date. If City reasonably disagrees with the second appraiser's market rate License Fee opinion and a market rate License Fee cannot be negotiated between the Parties, City may hire a third Qualified Appraiser to review both appraisals, accept one or the other market rate License Fee opinions or form an independent opinion of the market rate License Fee as of the Adjustment Date. City and Licensee agree to equally share the cost of the third appraiser. City and Licensee agree to accept and be bound by the market rate License Fee determined by the third appraiser. If the market rate License Fee determination is not completed prior to the Adjustment Date, Licensee shall pay a License Fee determined under clause "(a)," and if the market rate adjustment, when determined, is higher than that amount, the higher market rate License Fee shall be retroactive to the Adjustment Date. All retroactive deficiency amounts shall be paid by Licensee to City within thirty (30) calendar days after determination of the market rate License Fee. In no event shall the adjusted License Fee amount be less than the minimum License Fee amount for the applicable Year shown in Section 2.33. Once adjusted as of the Adjustment Date, the annual License Fee amount shall increase on each anniversary of the Adjustment Date by an amount equal to three percent (3%) of

6 UNDER ANY PROVISION OF APPLICABLE LAW PROVIDING THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY, INCLUDING CALIFORNIA CIVIL CODE SECTION 1542. THE PROVISIONS OF THIS SECTION 6 SHALL SURVIVE THE TERMINATION DATE.

7. **LICENSE FEE.** Licensee shall annually pay the License Fee to City on or before the first day of each Year, without Notice from City, as part of the consideration to City for permitting Licensee to use the License Area and the City Access Road for Licensee's Operations under this License Agreement; provided, however, that the first Licensee Fee payment shall be paid within sixty (60) days after the Effective Date.

7.1 Payment. License Fees are payable to the City Treasurer in lawful money of the United States of America by good and sufficient check, wire transfer, or electronic funds transfer, at City's election, in its sole and absolute discretion, to such account or address as City designates by Notice to Licensee from time to time. License Fee payments sent by mail shall be sent to City by first-class mail through the United States Postal Service with all postage pre-paid and addressed to:

The City of San Diego
Office of the City Treasurer
P.O. Box 129030
San Diego, California 92112-9030

License Fee payments made in person shall be hand delivered to:

Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

7.2 Required Payment Information. Licensee shall include City's customer account number for Licensee with each License Fee payment so City can apply the License Fee to Licensee's account. Licensee's failure to include its customer account number may result in Licensee's payment not being timely applied to Licensee's account and the application of late payment charges. Licensee assumes all risk of loss and responsibility for all fees or penalties for its failure to include its customer account number with a License Fee payment. The place of payment may be changed at any time by City upon thirty (30) days prior Notice to Licensee. Payments sent by mail shall be considered paid on the date postmarked by the United States Postal Service, provided Licensee's customer account number is included with such payment, as required in this Section 7.2. Licensee assumes all risk of loss and responsibility for late payment charges if payments are sent by mail.

7.3 Invoicing Courtesy. City may invoice Licensee for amounts payable under this License Agreement. However, any such invoicing is a courtesy only. Licensee shall make all

the annual License Fee for the preceding Year. In lieu of the above-described market rate appraisal adjustment, City may determine that no market rate appraisal adjustment is necessary and waive the appraisal requirement by Notice to Licensee, in which case, the License Fee amount for each of Years 6 through 10 shall be three percent (3%) above the annual License Fee amount for each preceding Year. In no event shall the License Fee amount ever decrease from the License Fee amount for the previous Year.

7.8 Unauthorized Use Charge. Licensee shall pay City one hundred (100%) of the gross revenue (all revenue without any deduction, credit, or set-off) from all use of the License Area that is not part of Licensee's Operations, regardless of any related penalties charged Licensee by competent Government authorities. The gross revenue from each use of the License Area that is not part of Licensee's Operations is payable to City within thirty (30) days after Licensee receives such revenue. Nothing in this Section 7.8 or City's acceptance of any payment under this Section 7.8 is intended to authorize any use of the License Area that is not part of Licensee's Operations, waive Licensee's Default for conducting or allowing such use, or waive any City right or remedy under this License Agreement.

8. **RELOCATION OF LICENSE AREA.** At any time during the Term, but only once during the Term, City, in its sole and absolute discretion, may relocate the License Area to a different location within the Property ("**Relocated License Area**") by Notice to Licensee. Licensee shall apply for (all Applications considered complete by the applicable Government) all Approvals required for removal and relocation of its Communications Equipment within ninety (90) days after Notice that City is relocating the License Area. Licensee shall remove its Communications Equipment from the License Area and relocate it to the Relocated License Area, at Licensee's sole cost and expense, within ninety days (90) days after obtaining all required Approvals for removal and relocation of its Communications Equipment. If, for any reason other than an Unavoidable Delay, Licensee's Communications Equipment is not removed from the License Area within one hundred eighty (180) days after City's Notice to Licensee of relocation of the License Area, City may terminate this License Agreement by Notice to Licensee. After relocation of Licensee's Communications Equipment to the Relocated License Area, the License Area shall automatically be redefined in this License Agreement to refer to the Relocated License Area. City and Licensee agree that "as built" drawings of the Relocated License Area shall be prepared by a licensed architect at Licensee's sole cost and expense, and the Site Plan shall be amended to describe the Relocated License Area (instead of the former License Area) and the new "as built" drawings. During Licensee's work of physically relocating the Communications Equipment to the Relocated License Area, City will reasonably cooperate with Licensee to attempt to identify an alternative space on the Property for Licensee to temporarily operate portable Communications Equipment installed and maintained at Licensee's sole cost and expense. Except as expressly provided in this Section 8, any relocation of the License Area shall not alter, modify, or otherwise change any of the terms or conditions of this License Agreement. If Licensee does not agree in writing with the City to the Relocated License Area within forty-five (45) days after Notice from City of relocation of the License Area to the Relocated License Area, then either

Licensee or City may terminate this License Agreement upon ninety (90) days' Notice to the other Party.

9. IMPROVEMENTS AND EQUIPMENT INSTALLATION.

9.1 Site Plan. Licensee's installed Communications Equipment shall precisely conform with the Site Plan. City may authorize changes to the Site Plan, provided the principal components of the Site Plan are not modified, the changes are approved by City, and this License Agreement is administratively amended to replace the previous Site Plan with the updated Site Plan showing the approved changes. Licensee's failure to precisely comply with the Site Plan shall be a Default by Licensee under this License Agreement. Other than as provided in the Site Plan, Licensee shall not make any improvements to or installations on the License Area, including any improvements or installations considered "eligible facilities" under Section 6409 of the Middle Class Tax Relief and Job Creation Act, codified at 47 U.S.C. §1455, without City's prior written consent, which consent may be given or withheld in City's sole and absolute discretion. Licensee represents and warrants to City that no Communications Equipment or other equipment not specifically identified in the Site Plan has been or will be placed or installed within the License Area by or on behalf of Licensee. No swapping out or changing Communications Equipment in the Non-Exclusive Use Area shall be done by Licensee without first obtaining City's prior written consent to such activity, which consent may be given or withheld in City's sole and absolute discretion; provided, however that Licensee may swap out or change Communications Equipment in the Exclusive Use Area that is within an enclosure and not visible outside the enclosure without City's consent, with fifteen (15) days prior Notice to City of the specific swaps or changes and subject to the other provisions of this License Agreement, including Sections 10, 14.1, and 27.1. Notwithstanding anything to the contrary in this Section 9.1, each installation, swap out, or change to Communications Equipment is subject to Licensee obtaining all Approvals required from City in City's governmental capacity for such installation, swap out, or change to Communications Equipment. Licensee shall update the Site Plan from time to time whenever a swap out or change is made to Communications Equipment to show each swap out or change.

9.2 Approvals. Licensee shall not make any improvement to or install any Communications Equipment on the License Area without first obtaining all necessary Approvals for such improvement or installation work. In obtaining any necessary Approval for improvement to or installation on the License Area, Licensee shall inform the applicable Government, in writing, that the Property is City-owned.

9.3 Protection Against Claims or Liens. IF ANY CLAIM OR LIEN IS RECORDED OR ASSERTED AGAINST THE PROPERTY OR THE CITY FOR MATERIALS SUPPLIED OR LABOR OR SERVICES PERFORMED DIRECTLY OR INDIRECTLY FOR LICENSEE OR A CONTRACTOR OF LICENSEE RELATING TO CONSTRUCTION, DEMOLITION, MAINTENANCE, INSTALLATION, REMOVAL OR OTHER WORK ON THE PROPERTY, LICENSEE SHALL SATISFY AND DISCHARGE SUCH CLAIM OR LIEN, AT THE SOLE COST AND EXPENSE OF LICENSEE, WITHIN TEN (10) DAYS FOLLOWING NOTICE OF THE EXISTENCE OR ASSERTION OF SUCH CLAIM OR LIEN. NOTICE IS HEREBY GIVEN THAT CITY SHALL NOT BE LIABLE FOR ANY SERVICES, LABOR, OR MATERIALS FURNISHED OR TO BE FURNISHED TO LICENSEE OR LICENSEE'S CONTRACTOR(S) UPON CREDIT AND THAT NO MECHANIC'S OR OTHER LIEN FOR

ANY SERVICES, LABOR, OR MATERIALS SHALL ATTACH TO OR AFFECT THE PROPERTY. NOTHING IN THIS LICENSE AGREEMENT SHALL BE DEEMED OR CONSTRUED IN ANY WAY TO CONSTITUTE CITY'S CONSENT OR REQUEST, EXPRESS OR IMPLIED, BY INFERENCE OR OTHERWISE, TO ANY CONTRACTOR, SUBCONTRACTOR, PROFESSIONAL, LABORER, EQUIPMENT OR MATERIAL SUPPLIER FOR THE PERFORMANCE OF ANY SERVICE OR LABOR OR THE FURNISHING OF ANY MATERIALS OR EQUIPMENT FOR ANY CONSTRUCTION, DEMOLITION, MAINTENANCE, INSTALLATION, REMOVAL OR OTHER WORK ON THE PROPERTY, NOR AS GIVING LICENSEE ANY RIGHT, POWER OR AUTHORITY TO CONTRACT FOR, OR PERMIT THE RENDERING OF, ANY SERVICES OR LABOR, OR THE FURNISHING OF ANY MATERIALS OR EQUIPMENT THAT WOULD GIVE RISE TO THE FILING OF ANY CLAIM OR LIEN AGAINST CITY OR THE PROPERTY.

9.4 No Liens Against Public Property. LICENSEE ACKNOWLEDGES AND AGREES THAT ON THE EFFECTIVE DATE THE PROPERTY IS OWNED BY CITY, WHICH IS A PUBLIC ENTITY, AND THAT THE PROPERTY IS NOT SUBJECT TO THE IMPOSITION OF MECHANIC'S LIENS OR ANY OTHER LIENS IN FAVOR OF PROVIDERS OF SERVICES, LABOR, MATERIAL, OR EQUIPMENT ON OR TO THE PROPERTY. LICENSEE FURTHER AGREES TO INFORM EACH PROVIDER OF SERVICES, LABOR, MATERIAL, OR EQUIPMENT ON OR TO THE PROPERTY HIRED BY OR FOR THE BENEFIT OF ONE OR MORE LICENSEE PARTIES OF SUCH FACT AND THAT CITY AND THE PROPERTY ARE NOT RESPONSIBLE FOR PAYMENT OF ANY CLAIMS BY ANY SUCH PROVIDERS OF SERVICES, LABOR, MATERIAL, OR EQUIPMENT.

9.5 Signs. No banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising (each, a "Sign") may be placed on the License Area without City's prior written consent, in each instance, which consent may be given or withheld in City's sole and absolute discretion, except for Signs required by Law. All Signs on the License Area will be maintained by Licensee in good, clean, and operating condition during the Term. Licensee will remove all Signs from the License Area on or before the Termination Date and repair all damage caused by installation or removal of Signs, all at Licensee's sole cost and expense. Licensee shall comply with all Laws requiring the posting of Signs on the License Area. If any unauthorized Sign is found on the License Area, Licensee shall remove the Sign at Licensee's sole cost and expense within twenty-four (24) hours after Notice from City requesting the removal. If Licensee does not remove the Sign within such twenty-four (24) hour period, City may enter the License Area and remove the Sign at Licensee's sole cost and expense. If City removes a Sign from the License Area under this Section 9.5, Licensee shall reimburse City for all costs and expenses reasonably incurred by City in performing such work (including the costs of City's staff time, administrative overhead, and Legal Costs), within thirty (30) days after Notice to Licensee of such costs. Any amount of money reimbursable to City by Licensee under this Section 9.5 that is not paid within thirty (30) days after Notice to Licensee of such amount shall accrue Default Interest from the date incurred until paid.

9.6 Licensee Maintenance or Repair. Licensee shall at all times during the Term maintain all Communications Equipment in a good, safe, clean, and organized condition, at Licensee's sole cost and expense. If any Communications Equipment is damaged by a casualty or

other cause, Licensee shall either restore the damaged Communications Equipment to the same or better condition of the Communications Equipment immediately before the damage or remove the damaged Communications Equipment from the License Area in a manner reasonably acceptable to City. Licensee shall commence such restoration or removal of damaged Communications Equipment within the earlier of: (a) a reasonable time under the circumstances; or (b) thirty (30) days following the date of the damage.

9.7 City Work. City reserves the right to perform work on the Property at any time. If City intends to perform work on the Property that will directly affect the License Area or Communications Equipment, City shall give Licensee at least forty-eight (48) hours' Notice prior to commencing the work (except in the event of an emergency, in which case, no prior Notice is required). Licensee shall comply with all safety instructions issued by City in writing to ensure the safety of City personnel or contractors performing work on the Property.

9.8 Emergency Maintenance Procedures. If Licensee discovers that any Communications Equipment is damaged, Licensee shall immediately notify City's Public Works Dispatch Center at (619) 527-7660. If City discovers that any Communications Equipment is damaged, City shall immediately notify the NCDJPA Emergency Communications Center at (858) 400-2800.

9.9 Inspection. City may, at any time, for any reason or no reason, without any obligation to do so, enter the License Area for the purposes of inspecting the License Area and Licensee's Operations conducted on the License Area for compliance with this License Agreement. Licensee shall make a representative available to be present at any City inspection under this Section 9.9 on, at least, forty eight (48) hours' Notice from City; provided, however, the presence of a Licensee representative is not required for City to exercise its rights under this Section 9.9.

9.10 Superior Interests. This License Agreement is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases, licenses, easements, and rights-of-way pertaining to the Property existing as of the Effective Date, whether or not of record. Licensee shall obtain all licenses, permits, and agreements from Third Persons with a superior interest required to allow Licensee's Operations. If Licensee's Operations are or become inconsistent or incompatible with a preexisting, superior interest, Licensee shall take such action and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.

9.11 City Facility Access. Licensee shall, at all times, comply with the provisions of **EXHIBIT E** attached to this License Agreement when entering the Property. **EXHIBIT E** may be updated from time to time in City's sole and absolute discretion. City shall Notify Licensee of all updates to **EXHIBIT E**. Licensee is only required to comply with updated provisions of **EXHIBIT E** of which City Notifies Licensee.

10. TELECOMMUNICATIONS PROVISIONS.

10.1 Radio Frequency Radiation.

10.1.1 *Allowed Levels.* Licensee shall maintain all radio frequency ("RF") radiation associated with Communications Equipment below the levels allowed by Part 47 Code of Federal Regulations section 1.1310 for "general population/uncontrolled exposure" ("Allowed Levels"), determined in accordance with the most recent edition of FCC OET Bulletin 65, "Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields," and its supplements. All areas within one thousand (1,000) feet of any RF transmitting Communications Equipment and accessible by the general public or any City employee or contractor at ground level shall be maintained at RF radiation levels below the Allowed Levels. Licensee shall Notify City of all areas within or around the License Area discovered by Licensee to exceed the Allowed Levels. Once Licensee's initial installation of Communications Equipment on the License Area is complete, Licensee shall perform an on-air test and provide City with documentation of that test showing that the Communications Equipment is operating within the Allowed Levels. After the initial on-air test, Licensee shall perform an on-air test within fifteen (15) days after City requests such a test by Notice to Licensee,

10.1.2 *Identification of Hazards.* Protection of the public and City employees and contractors entering the Property is of primary concern. All areas of the Property in which the public or City employees or contractors may be subjected to RF radiation levels exceeding the Allowed Levels (including towers or other structures) shall be clearly identified by signs posted on the Property by Licensee and Licensee taking all other actions required by Law relating to RF radiation, including complying with all California Department of Industrial Relations Division of Occupational Safety and Health requirements.

10.1.3 *Indemnity.* Licensee shall Indemnify the City Parties for all Claims resulting or arising from RF radiation levels exceeding the Allowed Levels caused or contributed to by Licensee's Operations.

10.1.4 *Communications Equipment Shutdown.* Communications Equipment installed on the License Area may, at times, require shutdown to allow City work on the Property. Licensee agrees to shutdown Communications Equipment for such work when requested to do so by Notice from City. City agrees to try not to request shutdowns of Communications Equipment between 10:00 am and 2:00 pm or during emergency incidents on any day. Licensee shall provide City with written shutdown procedures consistent with this License Agreement and reasonably acceptable to City, including contact names and telephone numbers. Licensee shall Notify City of all changes to the shutdown procedures, contact names, or telephone numbers at least ten (10) days before the change becomes effective. No change in Licensee's shutdown procedures shall be effective until approved by Notice from City.

10.2 Radio Frequency Interference. Licensee shall comply with the provisions of **EXHIBIT F** attached to this License Agreement. **EXHIBIT F** may be updated from time to time in City's sole and absolute discretion. City shall Notify Licensee of all updates to **EXHIBIT F**. Licensee is only required to comply with updated provisions of **EXHIBIT F** of which City Notifies Licensee. Licensee shall not install, operate, modify, or maintain any Communications Equipment on the License Area that in any way results in degraded performance of, or RF interference with, any other equipment located on the Property and installed by City or installed by a lessee or licensee under a lease or license agreement entered into by City.

10.3 Industry Standards. Licensee shall perform Licensee's Operations in accordance with industry standards set by the "Standards and Guidelines for Communications Sites" (Publication R56), published by Motorola, Inc., or any succeeding industry standards and all the following additional requirements:

10.3.1 At the end of each workday, Licensee shall remove from the License Area and properly dispose of all trash or debris resulting from Licensee's Operations;

10.3.2 Tower or structure climbing shall be done in compliance with Law;

10.3.3 All transmitters shall have all necessary protection, such as cavity filtering and transmitter isolators, to eliminate any RF degradation of the receive signal to other equipment located on the Property; and

10.3.4 Licensee shall comply with the provisions of **EXHIBIT G** attached to this License Agreement. **EXHIBIT G** may be updated from time to time in City's sole and absolute discretion. City shall Notify Licensee of all updates to **EXHIBIT G**. Licensee is only required to comply with updated provisions of **EXHIBIT G** of which City Notifies Licensee.

10.4 Collocation. If communications equipment owned by Third Persons or City is located on the Property, Licensee shall not access any communications equipment owned by Third Persons or City (including any towers) located on the Property, without City's prior written consent, which consent may be given or withheld in City's sole and absolute discretion. Other than during an emergency, the City shall not permit any Third Persons to access Licensee's Communications Equipment without first obtaining Licensee's consent, which Licensee may withhold in its sole discretion.

11. LICENSEE INSURANCE. Licensee shall maintain, to protect the City Parties against all insurable Claims arising from or relating to this License Agreement, the License Area, the Communications Equipment, or Licensee's Operations, at the sole cost and expense of Licensee, all the insurance coverage required in **EXHIBIT C** attached to this License Agreement.

12. WASTE OR DAMAGE. Licensee shall immediately Notify City of any waste, casualty, or damage to the License Area or adjacent areas of the Property of which Licensee becomes aware. Licensee shall not commit, or allow to be committed, any waste, casualty, or damage to property or injury to person on or around the License Area. If waste, casualty, or damage to the Property arises from Licensee's Operations, at City's election, in City's sole and absolute discretion, Licensee shall make, or cause to be made, full repair of the waste, casualty, or damage and restore the Property to substantially its condition existing immediately prior to the waste, casualty, or damage. Licensee shall commence preliminary steps toward restoration of the Property as soon as practicable, but no later than thirty (30) days after the date the waste, casualty, or damage occurs. Licensee shall complete all required repairs and/or restoration within ninety (90) days after the date the waste, casualty, or damage occurs. Licensee must obtain all Approvals required for repair or restoration of all waste, casualty, or damage to the Property. This Section 12 shall survive the Termination Date.

13. ENVIRONMENTAL CONDITIONS. Licensee shall not cause or permit any Environmental Condition. If Licensee discovers or becomes aware of an Environmental Condition,

Licensee shall Notify City of such Environmental Condition as soon as possible, but in all cases within twenty-four (24) hours following the Licensee becoming aware of such Environmental Condition.

13.1 Remediation. If an Environmental Condition occurs, Licensee shall remediate the Environmental Condition in accordance with Law to allow all uses of the Property permitted by Law immediately before the Environmental Condition is discovered, at Licensee's sole cost and expense. If Licensee knows or has reasonable cause to believe that an Environmental Condition is an imminent danger to public health and safety, Licensee shall take all actions necessary to alleviate the imminent danger, at Licensee's sole cost and expense.

13.2 Removal. If a Licensee Party stores, utilizes, generates, or otherwise brings Hazardous Substances onto the Property in accordance with Law, Licensee shall remove all such Hazardous Substances from the Property prior to the Termination Date and provide City with documentation demonstrating the legal removal and disposal of the Hazardous Substances. Licensee shall be responsible for all costs incurred by City to remove or dispose of any Hazardous Substances not removed from the Property by Licensee in accordance with this Section 13.2.

13.3 Reports. Licensee shall deliver a written report describing the circumstances of each Environmental Condition in reasonable detail to the City within five (5) Business Days after Notifying City of the Environmental Condition. Licensee shall also submit all required reports relating to the Environmental Condition to other Governments as required by Law.

13.4 Environmental Assessment. Upon reasonable cause to believe that an Environmental Condition has occurred, City may cause an environmental assessment of the Property to be performed by a professional environmental consultant registered with the State as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be performed at Licensee's sole cost and expense. Licensee shall reimburse City for all costs and expenses reasonably incurred by City in performing the environmental assessment within fifteen (15) days after Notice to Licensee of the amount of such costs and expenses. Any amount reimbursable to City by Licensee under this Section 13.4 that is not paid within thirty (30) days after Notice to Licensee of such amount, shall accrue Default Interest until paid.

14. COMPLIANCE WITH LAW.

14.1 General. Licensee's Operations shall comply with all Laws, at Licensee's sole cost and expense. Licensee shall comply with all notices issued by City or any other Government under the authority of current or future Law. Licensee shall not conduct any Licensee's Operations without first obtaining all necessary Approvals. Immediately after obtaining an Approval regarding Licensee's Operations, Licensee shall deliver to City documentary evidence of the Approval obtained by Licensee regarding Licensee's Operations.

14.2 Compliance with City Standard Contract Provisions. Licensee shall comply with all City standard contract provisions set forth in **EXHIBIT D** attached to this License Agreement.

15. INDEMNIFICATION.

15.1 Licensee Indemnity Obligations. In addition to Licensee's obligations to Indemnify the City Parties under other provisions of this License Agreement, Licensee shall Indemnify the City Parties against all Claims arising from: (a) Licensee's use of the License Area; (b) this License Agreement; (c) personal injury (including death) or property damage (to property of Licensee or any other Person) occurring on the License Area or adjoining real property; (d) personal injury (including death) or property damage resulting from Licensee's use of the License Area; (e) a wrongful intentional act or negligence of one or more of the Licensee Parties; (f) strict liability relating to Licensee's use of the License Area; (g) all Applications made by or on behalf of one or more Licensee Parties; (h) all agreements that one or more Licensee Parties makes with a Third Person regarding this License Agreement or the License Area; (i) services, labor, material, or equipment supplied to, for, on behalf of, or at the request of one or more Licensee Parties; (j) all workers' compensation claims by one or more of the employees or contractors of one or more of the Licensee Parties; or (k) all Environmental Conditions occurring on or after the Effective Date. Notwithstanding anything to the contrary in this License Agreement, Licensee's obligations to Indemnify the City Parties excludes Claims arising solely from the established active negligence or willful misconduct of a City Party.

15.2 Independence of Insurance and Indemnity Obligations. Licensee's obligations to Indemnify the City Parties under this License Agreement shall not be construed or interpreted as in any way restricting, limiting, or modifying Licensee's insurance or other obligations under this License Agreement. Licensee's obligations to Indemnify the City Parties under this License Agreement are independent of Licensee's insurance and other obligations under this License Agreement. Licensee's compliance with its insurance obligations and other obligations under this License Agreement shall not in any way restrict, limit, or modify Licensee's obligations to Indemnify the City Parties under this License Agreement and are independent of Licensee's obligations to Indemnify the City Parties and other obligations under this License Agreement.

15.3 Survival of Indemnification Obligations. Licensee's obligations to Indemnify the City Parties under this License Agreement shall survive the Termination Date, until all actual or prospective Claims subject to Licensee's obligations to Indemnify the City Parties under this License Agreement are fully, finally, absolutely, and completely barred by applicable statutes of limitations.

15.4 Indemnification Procedures. Wherever this License Agreement requires Licensee to Indemnify the City Parties:

15.4.1 *Notice.* The affected City Parties shall Notify Licensee of the Claim within a reasonable time.

15.4.2 *Selection of Counsel.* Licensee shall select counsel reasonably acceptable to City's City Council. Even though Licensee shall defend the Claim, the affected City Parties may, at their respective options, engage separate legal counsel, at Licensee's expense, to advise them regarding the Claim and their defense. The affected City Parties' separate legal counsel(s) may attend all proceedings and meetings. Licensee's legal counsel shall actively consult with the

City Parties' separate legal counsel, subject to applicable conflict of interest and privileged communication limitations.

15.4.3 *Cooperation*. The affected City Parties shall reasonably cooperate with Licensee's defense of the City Parties.

15.4.4 *Settlement*. Licensee may only settle a Claim with the prior written consent of the affected City Parties, in their respective sole and absolute discretion.

15.5 Immediate Duty to Defend. The duty to defend that is within Licensee's obligations to Indemnify the City Parties under this License Agreement includes Claims for which the City Parties may be liable without fault or strictly liable and applies regardless of whether the issues of negligence, liability, fault, default, or other obligation on the part of Licensee or the City Parties have been determined. The duty to defend applies immediately, regardless of whether the City Parties have paid any sums or incurred any detriment arising out of or relating (directly or indirectly) to any Claims. It is the express intention of the Parties that the City Parties be entitled to obtain summary adjudication or summary judgment regarding Licensee's duty to defend the City Parties at any stage of a Claim within the scope of Licensee's obligations to Indemnify the City Parties under this License Agreement.

15.6 Savings Provision. Notwithstanding anything in this License Agreement to the contrary, if the extent of Licensee's obligation to Indemnify the City Parties under this License Agreement exceeds the indemnity obligation allowed by applicable Law, Licensee's obligation to Indemnify the City Parties shall be reduced to the extent required to comply with applicable Law.

16. TAXES; POSSESSORY INTEREST TAX. Licensee shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon Licensee, Licensee's Operations, the License Area, or Communications Equipment. Licensee acknowledges and agrees that this License Agreement may create a possessory interest in the Property subject to property taxation and that Licensee may be subject to payment of property taxes levied on such interest. Any such possessory interest tax imposed shall be solely a tax liability of Licensee and shall be paid before delinquency by Licensee. In addition, Licensee shall pay before delinquency all personal property taxes becoming due for equipment, fixtures, inventory, or other personal property of Licensee or any Licensee Party installed, maintained, or present at or on the License Area.

17. TERM.

17.1 *Duration*. The duration of this License Agreement ("**Term**") shall begin on the Effective Date and terminate upon the earliest to occur of the following events ("**Termination Date**"):

17.1.1 Licensee Notice. Licensee giving one hundred eighty (180) days' Notice to City terminating this License Agreement and Licensee's removal of all Communications Equipment and personal property from the License Area under Section 22;

17.1.2 Expiration. 11:59 p.m. Pacific Time on the day immediately preceding the tenth (10th) anniversary of the Effective Date;

17.1.3 Discontinued Operation. City termination of this License Agreement under Section 3.9;

17.1.4 Relocated License Area Termination. City termination of this License Agreement under Section 8;

17.1.5 Eminent Domain. Termination of this License Agreement under Section 28;

17.1.6 Event of Default. Following the occurrence of an Event of Default, the non-defaulting Party giving Notice of its termination of this License Agreement;

17.1.7 Casualty. Following the occurrence of any casualty that materially restricts use of the License Area or access to the License Area for Licensee's Operations for more than ninety (90) days, City or Licensee may terminate this License Agreement by thirty (30) days' Notice to the other Party;

17.1.8 Breach of Warranty. City termination of this License Agreement under Section 35;

17.2 Refund of Pre-Paid License Fee. After the Termination Date, City shall refund to Licensee the prorated amount of any pre-paid License Fee applicable to any time after the Termination Date less amounts required to compensate City for amounts owed or becoming due to City from Licensee under this License Agreement as of, following, or due to the termination of this License Agreement.

18. CITY CURE RIGHT. If Licensee at any time fails to take any action this License Agreement requires of Licensee, without waiving or releasing Licensee from any obligation, Default, or Event of Default and without waiving City's right to take such action as this License Agreement may permit as a result of a Default or Event of Default, City may (but need not), on ten (10) Business Days' Notice to Licensee, take such action. Licensee shall reimburse City for an amount equal to: (a) all reasonable costs and expenses (including Legal Costs) incurred by City in exercising its cure rights under this Section 18; and (b) Default Interest on all amounts described in clause "(a)" until all such amounts are reimbursed in full to City by Licensee. Nothing in this Section 18 is intended to modify or restrict any other cure right provided to City in this License Agreement.

19. REMEDIES. Upon the occurrence of an Event of Default by the other Party, the non-defaulting Party shall be entitled to take any action authorized by this License Agreement upon the occurrence of an Event of Default by the other Party, including legal proceedings to enforce any contractual right or remedy, or pursue any other remedy or damages relating to such Event of Default available to the non-defaulting Party at law or in equity.

20. LEGAL ACTIONS. Either Party may institute legal action, at law or in equity, to enforce or interpret the rights or obligations of the Parties under this License Agreement or recover damages.

21. CUMULATIVE RIGHTS AND REMEDIES. The rights and remedies of the Parties under this License Agreement are cumulative with any other rights or remedies of the Parties under

this License Agreement, at law, or in equity. The exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or a different time, of any other right or remedy for the same Default or Event of Default or the same right or remedy for any other Default or Event of Default by the other Party.

22. LEGAL CHALLENGE OR CHANGE IN LAW. If a lawsuit is filed against City or Licensee to prevent or prohibit Licensee's Operations on the License Area, or a subsequent change in Law prohibits Licensee's Operations on the License Area, either Party shall have the right to terminate this License Agreement, in its respective sole and absolute discretion, on thirty (30) days' Notice to the other Party.

23. SURRENDER.

23.1 Licensee Removal of Communications Equipment. If sixty (60) or more days' Notice of the Termination Date is given by City as permitted by this License Agreement, then before the Termination Date, Licensee shall, at its sole cost and expense, remove from the License Area and repair all damage from such removal, all in a manner reasonably satisfactory to City, reasonable wear and tear excepted: (a) all personal property brought onto the License Area by or on behalf of a Licensee Party; (b) all Communications Equipment placed on the License Area by or on behalf of a Licensee Party; and (c) all improvements made to the License Area by or on behalf of a Licensee Party. If less than sixty (60) days' Notice of the Termination Date is given by City as permitted by this License Agreement, Licensee shall perform the work described in clauses "(a)" through "(c)" of this Section 23.1 within sixty (60) days after Notice of the Termination Date provided, however, that so long as the Licensee has begun efforts to remove and repair any damage, and is diligently pursuing its efforts to complete the work, it shall be given such reasonable time after the sixty (60) days as may be necessary to complete its work. Notwithstanding the foregoing provisions of this Section 23.1, if Licensee terminates this License Agreement under Section 17.1.1, Licensee shall perform the work described in clauses "(a)" through "(c)" of this Section 23.1 before the Termination Date.

23.2 City Removal of Communications Equipment. City shall have the right, after ten (10) days' Notice to Licensee, to perform the work required by Section 23.1 if Licensee does not either: (i) commence performing the work required by Section 23.1 within the required time, or (ii) complete all work required by Section 23.1 within the required time. If City performs work required of Licensee under Section 23.1, Licensee shall reimburse City for all costs and expenses reasonably incurred by City in performing such work (including the costs of City staff time, administrative overhead, and Legal Costs), within thirty (30) days after Notice to Licensee of the amount of such costs, which Notice shall include reasonable supporting documentation. Any amount reimbursable to City by Licensee under this Section 23.2 that is not paid within thirty (30) days after Notice to Licensee of such amount, shall accrue Default Interest until paid.

24. TRANSFER. Licensee shall not have any right to make or allow any Transfer without the prior written consent of City, which consent may be given or withheld in the City's sole and absolute discretion. Licensee acknowledges and agrees that, under the circumstances that this

License Agreement is entered into by City and Licensee, the restrictions in this License Agreement on Transfers are reasonable.

25. HOLDOVER. If Licensee continues to use the License Area after the Termination Date, such use or City's receipt or acceptance of any License fee shall not constitute a renewal or extension of this License Agreement, nor give Licensee any right in or to the License Area after the Termination Date. Licensee may not use the License Area after the Termination Date without City's prior written consent, which consent may be given or withheld in City's sole and absolute discretion. Licensee's use of the License Area after the Termination Date with City's consent shall be on all the terms and conditions of this License Agreement, except that City may terminate this License Agreement at will, at any time, for any reason or no reason, and may demand and receive a License Fee from Licensee equal to the then fair market value of the use of the License Area at its highest and best use, all as determined by the City. City's acceptance of any License Fee from Licensee after the Termination Date shall not constitute a renewal or extension of this License Agreement.

26. NO SUBLICENSING. Licensee shall not sublicense all or any part of the License Area or any Communications Equipment.

27. CITY'S RESERVATION OF RIGHTS.

27.1 Government Action. By entering into this License Agreement, neither City nor the City Council is obligating itself or any other Government regarding any discretionary action relating to the use of the License Area, including re-zonings, variances, environmental clearances, or any Approval required for Licensee's Operations or otherwise. Licensee shall diligently seek and use commercially reasonable efforts to obtain, at Licensee's sole cost and expense, all Approvals required from City and other Governments necessary for Licensee's Operations. Notwithstanding the foregoing, City shall cooperate with Licensee in City's proprietary capacity as owner of the Property, at no cost to City, with Licensee's efforts to obtain such Approvals.

27.2 Resources. City reserves all right, title, and interest in all natural resources relating to the Property, including subsurface natural gas, oil, minerals, and water, on or within the Property.

28. EMINENT DOMAIN. If all or part of the Property is taken through eminent domain proceedings or under threat of the exercise of the power of eminent domain by any Government or public utility with the power of eminent domain over the Property, the interests of City and Licensee shall be as follows:

28.1 Full Taking. If all or substantially all the Property is taken, this License Agreement shall terminate on the date of the transfer of title or possession of the Property to the condemning Government or public utility, whichever first occurs first.

28.2 Partial Taking - Remainder Unusable. If a partial taking of the Property occurs and, in City's sole and absolute discretion, the remaining part of the Property is unsuitable for both the Primary Use and Licensee's Operations on the remaining part of the License Area, this License Agreement shall terminate on the date of the transfer of title or possession of the part of the Property taken to the condemning Government or public utility, whichever occurs first.

28.3 Partial Taking - Remainder Usable. If a partial taking of the Property occurs and, in City's sole and absolute discretion, the remaining part of the Property is suitable for both the Primary Use and Licensee's Operations, on the remaining part of the License Area, this License Agreement shall terminate regarding any part of the License Area taken on the date of the transfer of title or possession of the part of the Property taken to the condemning Government or public utility, whichever occurs first, but shall continue for the part of the License Area not taken. The License Fee shall be equitably reduced in proportion to the portion of the License Area affected by the taking of a portion of the Property, but only to the extent that Licensee's Operation are reduced.

28.4 Award. Notwithstanding anything to the contrary in this License Agreement, in all eminent domain proceedings, settlements, or other means by which a taking of the Property by exercise or threat of exercise of the power of eminent domain is pursued or resolved, all money paid or awarded in such process shall be the sole property of City. Licensee shall be entitled to pursue all claims against the condemning Government or public utility available to License under Law relating to moving Licensee's personal property located on the License Area.

28.5 Transfer. City may transfer its title or interest in the Property in lieu of condemnation to any Government or public utility entitled to exercise the power of eminent domain over the Property.

28.6 No Inverse Condemnation. City's exercise of any right under this License Agreement is not an exercise of the power of eminent domain and shall not impose any liability on City for inverse condemnation.

29. **NOTICES.** All Notices submitted by a Party to the other Party under or as required by this License Agreement shall be sent by messenger for immediate personal delivery, nationally recognized overnight (one Business Day) delivery service (i.e., United Parcel Service, Federal Express, etc.), or registered or certified first-class mail, postage prepaid, return receipt requested through the United States Postal Service, to the address of the recipient Party designated below in this Section 29. Notices may be sent in the same manner to such other addresses as either Party may from time to time designate by Notice in accordance with this Section 29. Notice shall be considered received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day the Notice is sent by messenger for immediate personal delivery, one (1) Business Day after delivery to a nationally recognized overnight delivery service, or three (3) Business Days after the Notice is deposited with the United States Postal Service in accordance with this Section 27. Any attorney representing a Party may give any Notice on behalf of such Party. The Notice addresses for the Parties, as of the Effective Date, are as follows:

To City:

City of San Diego
Department of Real Estate and Airport
Management
Attention: Director
1200 Third Avenue, Suite 1700, MS 51A
San Diego, CA 92101-4155

To Licensee:

North County Dispatch Joint Powers
Authority
P.O. Box 1206
Rancho Santa Fe, CA 92067
Attention: Network Real Estate

30. TIME PERIOD CALCULATION. Unless otherwise specified, all references to time periods in this License Agreement measured in days shall be to consecutive calendar days, all references to time periods in this License Agreement measured in months shall be to consecutive calendar months, and all references to time periods in this License Agreement measured in years shall be to consecutive calendar years. Any reference to Business Days in this License Agreement shall mean consecutive Business Days.

31. INTERPRETATION PRINCIPLES. No inference in favor of or against any Party shall be drawn from the fact that such Party drafted any part of this License Agreement. The Parties participated substantially in the negotiation, drafting, and revision of this License Agreement, with advice from legal and other counsel and advisers of their own selection. A word, term or phrase defined in the singular in this License Agreement may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which shall govern all language in this License Agreement. The words "include" and "including" in this License Agreement shall be construed to be followed by the words: "without limitation." Each collective noun in this License Agreement shall be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference to a document, including this License Agreement, refers to such document, as modified from time to time (excepting any modification violating this License Agreement), and includes all exhibits, schedules, addenda, and riders to such document. The word "or" in this License Agreement includes the word "and," except where the context clearly requires otherwise. Every reference to a law, statute, regulation, order, form, or similar Government requirement refers to each such requirement as amended, modified, renumbered, superseded, or succeeded, from time to time.

32. GOVERNING LAW. The procedural and substantive laws of the State shall govern the interpretation and enforcement of this License Agreement, without application of conflicts of laws principles or statutes. The Parties acknowledge and agree that this License Agreement is entered into, is to be fully performed in and relates to real property located in the County. All legal actions arising from this License Agreement shall be filed in the Superior Court of the State in and for the County or in the United States District Court with jurisdiction in the County.

33. PRIOR AGREEMENT TERMINATION. As of the Effective Date, all leases, right-of-entry permits, or other agreements between City and Licensee concerning Licensee's Operations on the Property, other than this License Agreement, are terminated, except as to any rents, fees, rights, or remedies accrued to either Party under those agreements prior to the Effective Date.

34. RELATIONSHIP OF PARTIES. The Parties each intend and agree that City and Licensee are independent contracting entities and do not intend by this License Agreement to

create any partnership, joint venture, or similar business arrangement, relationship, or association between them.

35. WARRANTY AGAINST PAYMENT OF CONSIDERATION FOR LICENSE AGREEMENT. Licensee represents and warrants to City that: (a) Licensee has not employed or retained any Person to solicit or secure this License Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees of Licensee; and (b) no gratuities, in the form of entertainment, gifts or otherwise have been or will be given by Licensee or any of Licensee's agents, employees or representatives to any elected or appointed official or employee of City in an attempt to secure this License Agreement or favorable terms or conditions for this License Agreement. Breach of the representations or warranties of this Section 35 shall entitle City to terminate this License Agreement immediately, without liability. Upon any termination of this License Agreement under this Section 35, Licensee shall immediately repay to City any payments made to or on behalf of Licensee by City (if any) under this License Agreement prior to the Termination Date.

36. UNAVOIDABLE DELAY; EXTENSION OF TIME FOR PERFORMANCE. Performance by either Party under this Agreement shall not be considered to be in Default, where any such Default is due to the occurrence of an Unavoidable Delay. Any Party claiming an Unavoidable Delay shall Notify the other Party: (a) within twenty (20) days after such Party knows of any such Unavoidable Delay; and (b) within twenty (20) days after such Unavoidable Delay ceases to exist. To be effective, any Notice of an Unavoidable Delay must describe the Unavoidable Delay in reasonable detail. The Party claiming an extension of time to perform due to an Unavoidable Delay shall exercise commercially reasonable efforts to cure the condition causing the Unavoidable Delay, within a reasonable time. Notwithstanding anything to the contrary in this License Agreement, no obligation of Licensee for payment of money under this License Agreement may be delayed by the occurrence of an Unavoidable Delay, unless the delay in payment of money is due to an Unavoidable Delay that prevents or materially limits the ability to transfer funds by or between Federal or State chartered financial institutions.

37. NO OTHER REPRESENTATIONS OR WARRANTIES. Except as expressly set forth in this License Agreement, no Party makes any representation or warranty material to this License Agreement to the other Party.

38. TAX CONSEQUENCES. Licensee acknowledges and agrees that it shall bear all responsibility, liability, costs, and expenses connected in any way with any tax consequences experienced by Licensee related to this License Agreement.

39. NO THIRD-PARTY BENEFICIARIES. Nothing in this License Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this License Agreement on any Person other than the Parties and their respective permitted successors and assigns (if any), nor is anything in this License Agreement intended to relieve or discharge any obligation of any Third Person to any Party or give any Third Person any right of subrogation or action over or against any Party.

40. TIME OF THE ESSENCE. As to the performance of any obligation under this License Agreement of which time is a component, the performance of such obligation within the time specified is of the essence of this License Agreement.

41. WAIVERS AND AMENDMENTS. All waivers of the provisions of this License Agreement must be in writing and signed by the authorized representative(s) of the Party making the waiver. All amendments to this License Agreement must be in writing and signed by the authorized representative(s) of both City and Licensee. Failure to insist on any one occasion upon strict compliance with any term, covenant, condition, restriction, or agreement contained in this License Agreement shall not constitute a waiver of such term, covenant, condition, restriction, or agreement, nor shall any waiver or relinquishment of any right or power under this License Agreement, at any one time or more times, constitute a waiver or relinquishment of such right or power at any other time or times.

42. COST RECOVERY. City collects various fees to offset administrative costs incurred for City staff services. City shall only process Licensee's Applications to City after receipt of Licensee's payment of the applicable fee. The fee schedule, which is on file at the Office of the City Clerk, may be updated from time to time in City's sole and absolute discretion.

43. ACCESSIBILITY ASSESSMENT. City discloses to Licensee that the Property has not been inspected by a Certified Access Specialist (CASP). City further states:

A Certified Access Specialist (CASP) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

44. SURVIVAL OF LICENSE AGREEMENT. All the provisions of this License Agreement shall be applicable to any dispute between the Parties arising from this License Agreement, whether prior to or after the Termination Date, until any such dispute is finally and completely resolved between the Parties, either by written settlement, entry of a non-appealable judgment, or expiration of all applicable statutory limitations periods, and all terms and conditions of this License Agreement relating to dispute resolution and remedies shall survive the Termination Date.

45. INTEGRATION. This License Agreement includes thirty one (31) pages and eleven (11) exhibits (the exhibits are incorporated into this License Agreement by this reference) constituting the entire understanding and agreement of the Parties regarding the subject matter of this License Agreement and supersedes all previous negotiations or agreements between the Parties relating to the subject matter of this License Agreement.

46. TITLES AND HEADINGS FOR REFERENCE ONLY. The titles and headings of the articles, paragraphs, or sections of this License Agreement are for convenience of reference only, are not to be considered a part of this License Agreement, and shall not in any way interpret, modify, or restrict the meaning of any term, provision, covenant, condition, restriction, reservation, or agreement in this License Agreement.

47. SEVERABILITY. If any term or provision of this License Agreement or its application to any Person or circumstance shall to any extent be invalid or unenforceable, then the remainder of this License Agreement, or the application of such term or provision to Persons or circumstances other than those as to which the term or provision is invalid or unenforceable, shall not be affected by such invalidity. All remaining terms and provisions of this License Agreement shall be valid and enforced to the fullest extent Law allows.

48. COUNTERPARTS. This License Agreement may be signed in multiple counterpart originals, each of which shall be considered an original, and all of which shall constitute one and the same agreement.

49. EXHIBITS. All the exhibits attached to this License Agreement are described as follows:

EXHIBIT A	Property Legal Description
EXHIBIT B	Site Plan
EXHIBIT C	Insurance Requirements
EXHIBIT D	City Standard Contract Provisions
EXHIBIT E	Facilities Access Procedures
EXHIBIT F	Radio Frequency Interference Standards
EXHIBIT G	Installation Standards
EXHIBIT H	P&R Telecom Service Provider Site Access Form
EXHIBIT I	PUD Telecom Service Provider Access Form
EXHIBIT J	Access Road
EXHIBIT K	Maintenance Expense Sharing

[Remainder of page intentionally blank. Signatures appear on the following page.]

**SIGNATURE PAGE
TO
TELECOMMUNICATIONS LICENSE AGREEMENT
(North County Dispatch Joint Powers Authority: Mt. Woodson Communications Complex)**

Licensee and City sign and enter into this License Agreement by and through the signatures of their respective authorized representatives, as follow:

CITY:

The City of San Diego,
a California municipal corporation

By: 
Christina Bibler
Director, Department of Economic
Development

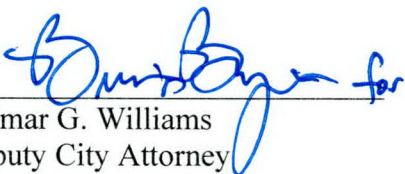
LICENSEE:

North County Dispatch Joint Powers Authority,
a California joint exercise of powers authority

By: 
Name: Christopher D Herren
Title: Administrator

Approved as to form on
8/1/2024 :

MARA W. ELLIOTT
City Attorney

By: 
Delmar G. Williams
Deputy City Attorney

**EXHIBIT A
TO
TELECOMMUNICATIONS LICENSE AGREEMENT
(North County Dispatch Joint Powers Authority: Mt. Woodson Communications Complex)**

PROPERTY LEGAL DESCRIPTION

All that portion of Section 27, TBS, Range 1 West, San Bernardino Base and Meridian, according to the U.S. Government Survey, in the County of San Diego, State of California described as follows:

COMMENCING at the south quarter of said Section 27 from which the United States Coast and Geodetic Station "Woodson 1953" having the Lambert Zone 6, NAD83 coordinates of North 1,947,522.38 and East 6,340,730.94, bears North 23E43'31 11

W.406.11 feet; Thence South 89E19'37" West 177.51 feet along the South line of said Section 27; Thence North 19E48'36 11 West 376.84 feet, to a point having the Lambert Zone 6 NAD84 coordinates of North 1,947,532.05 and East 6,340,588.61, said point being the TRUE POINT OF BEGINNING; Thence South 89E 11 '09" West 410.94 feet; Thence North 20E08'21" West 83.00 feet; Thence South 89E11 '09" West 250.00 feet; Thence South 20E08'21" East 100.00 feet; Thence South 89E 11 '09" West 450 feet' Thence North 20E08'21 11 West 200.00 feet; Thence North 89E1 1 '09" East 250.00 feet; Thence North 20E08'21" West 50.00 feet; Thence North 89E 1 _1 '09" East 450.00 feet; Thence North 20E08'21" West 53.22 feet; Thence North 89E1 1 109" East 210.94 feet; Thence South 20E08'21" East 64.55 feet; Thence North 89E1 1 '09" East 201.37 feet; Thence South 19E48'36 11 East 221.22 feet to the TRUE POINT OF BEGINNING.

Above described exception parcel contains 5.2503 Acres.

TOGETHER WITH the right of ingress and egress thereto over and along an existing road, or its future relocation, running easterly from the Mt. Woodson/Palomar Telecommunications facility,' through portions of Section 26, 34 and 35 to the existing location of the old Ramona-Poway Road. Said existing access road described in City of San Diego Field Survey notes by Lorne de Pron, January 26, 2000, L.C. Index 302-1733, W.O. 110013, on file in the Field Engineering office of the City of San Diego Land Surveyor.

**EXHIBIT B
TO
TELECOMMUNICATIONS LICENSE AGREEMENT
(North County Dispatch Joint Powers Authority: Mt. Woodson Communications Complex)**

SITE PLAN

[Attached behind this cover page]

Through a cooperative effort between the City and County of San Diego, the San Diego County Fire Chiefs in a regional approach have continued to build out, improve, and enhance the existing Conventional VHF Radio System and Infrastructure. Planning and implementation continued with the San Diego Regional VHF Radio Project. The Mt. Woodson site is identified in a Conceptual Design Report (CDR) completed by Federal Engineering in 2020 to fill in gaps in coverage in the North Zone area of the Regional VHF Project. The Regional VHF Project will be utilizing the county microwave system for back haul purposes. The North Zone VHF equipment will need to interface with the county microwave system at the site.

The proposed VHF channels are XSD CMD 13 - 155.100 MHz, XSD CMD 16 - 155.7750 MHz - XSD CMD 21, 153.815 MHz & XSD CMD 8 - 155.685 MHz. A new FCC license application will be applied for after the lease agreement has been signed with a proposed output power of 100 watts. See frequency list below.

The Lat/Long for the lower Mt. Woodson City site is 32 degrees 00' 32.45' N and 116 degrees 58' 26.05" W and the elevation is 2781 Ft per Ahola Engineering Tower Structural Report dated June 03, 2022. Please see attached propagation for 100 Watts output.

On behalf of the North Zone within the regional project, the North County Dispatch Joint Powers Authority (NCDJPA) would like to request space at Woodson, the lower City Site to install VHF radio equipment to include four (4) repeaters and (2) antennas.

North County Dispatch Joint Powers Authority (NCDJPA) will remove (3) microwave dishes as proposed by M/W De-installation proposal 9/7/2021.

North County Dispatch Joint Powers Authority (NCDJPA) will provide an updated post tower analysis report after installation to include all equipment and hardware installed after installation.

North County Dispatch Joint Powers Authority (NCDJPA) will provide a valid FCC license prior to operational use of installed equip

CONFIGURATION: SINGLE TRANSMIT ANTENNA AND SINGLE RECEIVE ANTENNA

NOTES:

Receive frequencies will be run through a multicoupler and connected to a single antenna at 79' AGL.

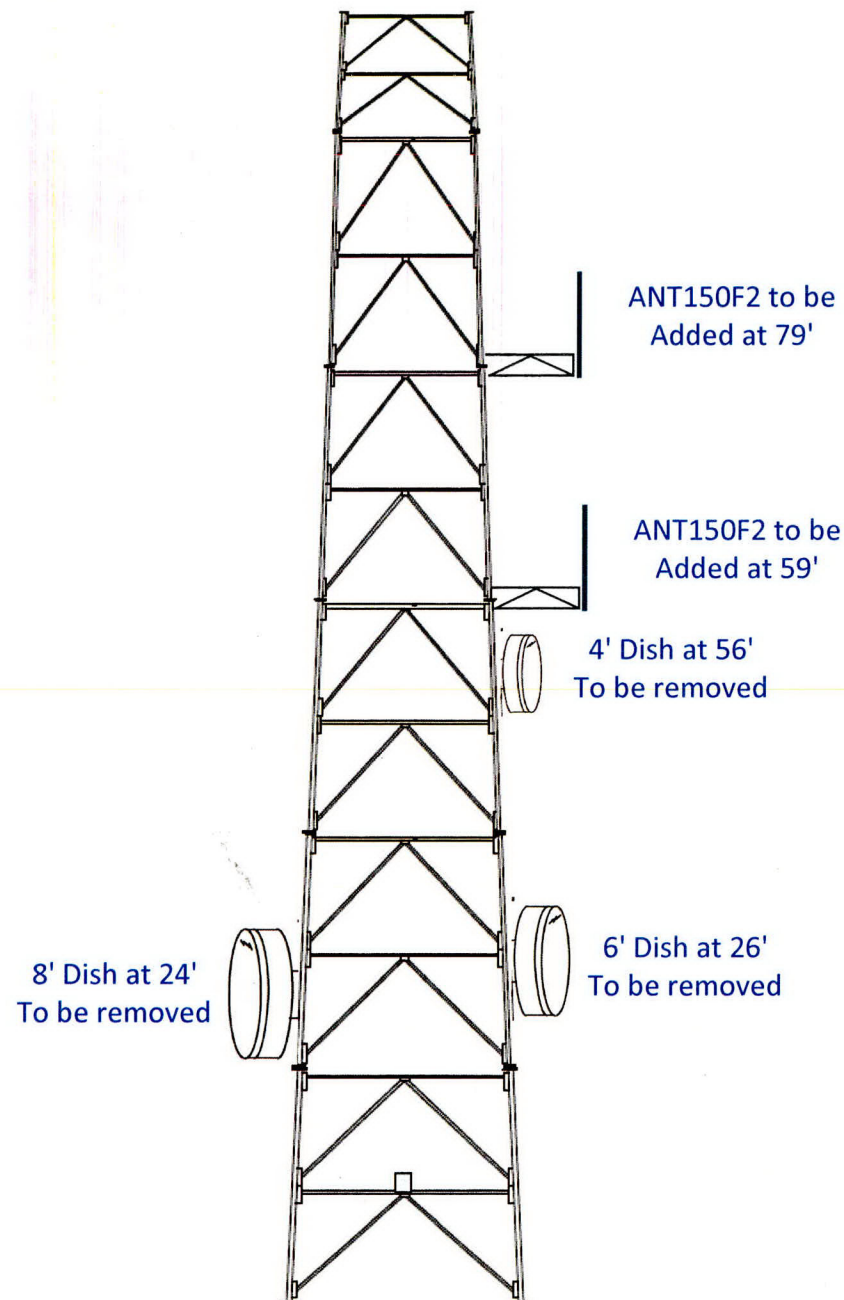
Transmit frequencies will be run through a combiner and connected to a single antenna at 59' AGL.

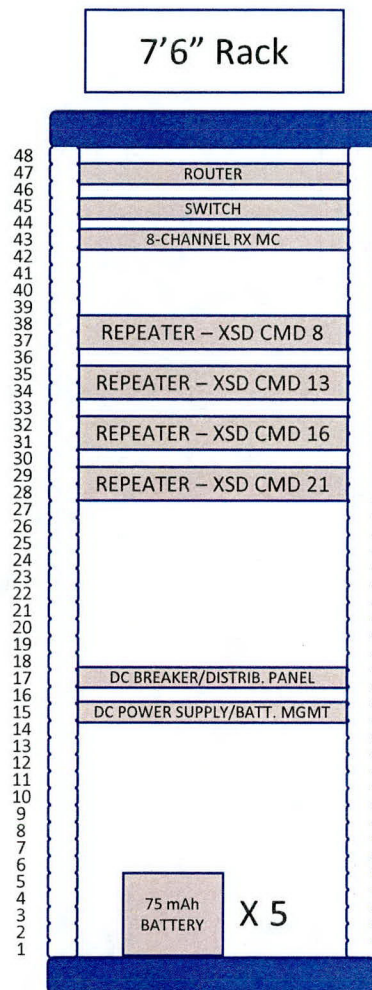
The equipment shown in this diagram is limited to the scope of the activities described in *COSD - Lower Woodson - MW De-Install Proposal_09.07.2021 Version 2.pdf*. Additional equipment currently present on the tower is not shown.

The tower drawing and antenna models are not drawn to scale.

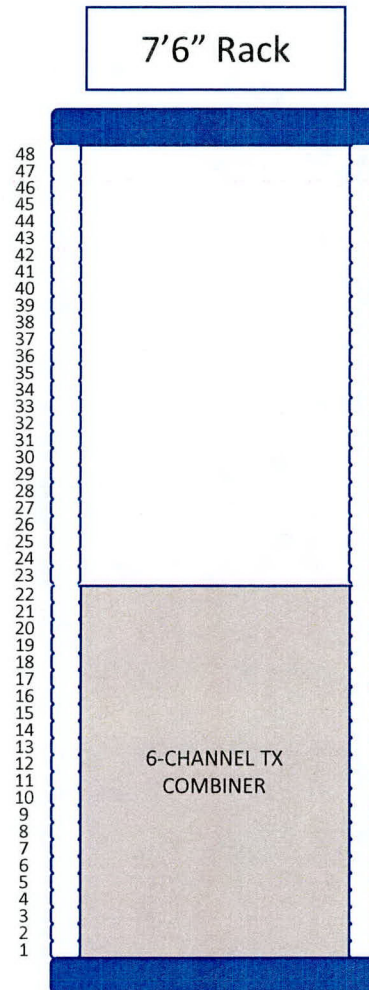
The mounts for the RF antennas are shown as a reference, but are not necessarily representative of the mounts which will be used in the final design.

The specific tower face(s) and tower leg(s) where the RF antennas will be installed is TBD - this diagram presents a record of the proposed mounting heights of the proposed antennas.





RACK 1



RACK 2

- Racks:
 - 2 x Chatsworth 46050-105, 48 RU each
- Networking (for connection to backhaul):
 - Cisco 1100 Router, 1 RU
 - Cisco C1000 Switch, 1 RU
- Repeaters:
 - 4 x Kenwood ATLAS 1200 Base Stations, 2 RU each
- Transmit Combiner:
 - dbSpectra DB4348-Series 6-Channel
- Receiver Multicoupler:
 - Telewave TWR8-150-1R, 1 RU
- DC Breaker/Distribution Panel:
 - ICT ICT200DB-12IRC, 1 RU
- DC Power Supply/Battery Mgmt:
 - ICT ICT-IPS-BMMDP, 1 RU
- Batteries:
 - 5 x Power-Sonic PS-12750 12V 75Ah, 5 RU
 - Arranged in a tray at bottom of rack

EXHIBIT C
TO
TELECOMMUNICATIONS LICENSE AGREEMENT
(North County Dispatch Joint Powers Authority: Mt. Woodson Communications Complex)

INSURANCE REQUIREMENTS

1. Required Insurance Coverage. Licensee shall maintain all the following insurance policies:

- 1.1. *Automobile Liability Insurance.* Insurance coverage against claims of personal injury (including bodily injury and death), and property damage covering all owned, leased, hired, and non-owned vehicles used by Licensee, with minimum limits for bodily injury and property damage of Two Million Dollars (\$2,000,000). Such insurance shall be provided by a business or commercial vehicle policy and may be provided through a combination of primary and excess or umbrella policies, all of which shall be subject to pre-approval by City, which pre-approval shall not be unreasonably withheld.
- 1.2. *Liability Insurance.* Commercial general liability insurance against claims for bodily injury, personal injury, death, or property damage occurring upon, in or about the License Area or adjoining streets or passageways, at least as broad as Insurance Services Office Occurrence Form CG0001, with a minimum liability limit of Two Million Dollars (\$2,000,000) for any one occurrence and Four Million Dollars (\$4,000,000) aggregate. Commercial general liability insurance coverage may be provided through a combination of primary and excess or umbrella insurance policies. If commercial general liability insurance or other form with a general aggregate limit is used, the general aggregate limit shall apply separately to the License Area.
- 1.3. *Property Insurance.* Insurance providing coverage for the License Area and all improvements on or to the License Area against loss, damage, or destruction by fire or other hazards encompassed under Cause of Loss – Special Form of property insurance coverage then customarily used for like properties in the County, in an amount equal to one hundred percent (100%) of the replacement value (without deduction for depreciation) of all improvements (excluding excavations and foundations), and in any event sufficient to avoid co-insurance and with no co-insurance penalty provision, with “ordinance or law” coverage. To the extent customary for like properties in the County at the time, such insurance shall include coverage for explosion of steam and pressure boilers and similar apparatus located in or associated with the License Area, an “increased cost of construction” endorsement and an endorsement covering demolition and cost of debris removal.
- 1.4. *Workers Compensation Insurance.* Workers compensation insurance complying with the provisions of State law and an employer’s liability insurance policy, with a minimum liability limit of One Million Dollars (\$1,000,000) per accident for bodily injury, or disease, covering all employees of Licensee.

- 1.5. *Contractors Pollution Liability Insurance.* If the Licensee's Operations includes sampling, testing, geotechnical boring, construction, or installation activities below the surface of the Property (collectively, "Subsurface Work"), Contractors Pollution Liability insurance against claims arising from pollution conditions or site environmental conditions, including ongoing operations performed by Licensee or on Licensee's behalf, Licensee's products, Licensee's work (including Licensee's completed operations performed by Licensee or on Licensee's behalf), or premises owned, leased, controlled, or used by Licensee, with minimum liability limits of Two Million Dollars (\$2,000,000) for any one claim or occurrence and Four Million Dollars (\$4,000,000) aggregate per policy period of one year. All costs of defense covered by the Contractors Pollution Liability Insurance shall be outside the policy's liability limits. The deductible for Contractors Pollution Liability Insurance may not exceed Twenty-Five Thousand Dollars (\$25,000) per claim unless and until Licensee obtains City's separate written approval of a higher deductible amount. With City's separate prior written approval, Licensee may satisfy its obligation to maintain Contractors Pollution Liability Insurance through its subcontractor that will perform the Subsurface Work maintaining Contractors Pollution Liability Insurance as required under these Insurance Requirements (defined below). When Licensee requests City's approval to use its subcontractor's Contractors Pollution Liability Insurance, Licensee shall certify to City that all Subsurface Work requiring Contractors Pollution Liability Insurance under these Insurance Requirements will be performed exclusively by the subcontractor that will maintain the Contractors Pollution Liability Insurance and provide City with a copy of its subcontractor's Contractors Pollution Liability Insurance policy. Policies issued on a claims made basis must be issued before any work commences, be maintained for the duration of all work and include a 12-month extended claims discovery period applicable to all work or the policy or policies must be maintained for at least 12 months after completion of all the work without advancing the retroactive date.
2. **Nature of Insurance.** The contents of this **EXHIBIT D** are sometimes referred to as the "**Insurance Requirements.**" All Liability Insurance, Automobile Liability Insurance, Property Insurance, Workers Compensation Insurance, and Contractors Pollution Liability Insurance (if required) policies required by these Insurance Requirements shall be issued by carriers that: (a) are listed in the then current "Best's Key Rating Guide—Property/Casualty—United States & Canada" publication (or its equivalent, if such publication ceases to be published) with a minimum financial strength rating of "A-" and a minimum financial size category of "VII" (exception may be made for the State Compensation Insurance Fund when not specifically rated); and (b) are authorized to do business in the State by the State Department of Insurance. Licensee may provide any insurance under a "blanket" or "umbrella" insurance policy, provided that: (i) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the License Area, which amount(s) shall equal or exceed the amount(s) required by these Insurance Requirements; and (ii) such policy otherwise complies with the requirements of these Insurance Requirements.
3. **Policy Requirements and Endorsements.** All insurance policies required by these Insurance Requirements shall contain (by endorsement or otherwise) the following provisions:

- 3.1. *Insured.* Liability Insurance and Contractors Pollution Liability Insurance policies shall name the City Parties as "additional insured." The coverage afforded to the City Parties shall be at least as broad as that afforded to Licensee regarding the License Area and may not contain any terms, conditions, exclusions, or limitations applicable to the City Parties that do not apply to Licensee.
- 3.2. *Primary Coverage.* All insurance coverage maintained by Licensee shall be primary to all insurance or self-insurance maintained by the City Parties and all insurance or self-insurance maintained by the City Parties shall be excess of all insurance maintained by Licensee and shall not contribute with any insurance maintained by Licensee.
- 3.3. *Contractual Liability.* Liability Insurance and Contractors Pollution Liability Insurance policies shall contain contractual liability coverage for Licensee's Indemnity obligations under this License Agreement. Licensee's maintaining or failing to maintain such contractual liability coverage shall not relieve Licensee from nor satisfy any Indemnity obligation of Licensee under this License Agreement.
- 3.4. *Deliveries to City.* Evidence of Licensee's maintenance of all insurance policies required by these Insurance Requirements shall be delivered to City before the Effective Date. No later than ten (10) days before any insurance required by these Insurance Requirements expires, is cancelled or its liability limits are reduced or exhausted, Licensee shall deliver to City evidence of Licensee's maintenance of all insurance required by these Insurance Requirements. Each insurance policy required by these Insurance Requirements shall be endorsed to state that coverage shall not be cancelled, suspended, voided, reduced in coverage or in limits, except after thirty (30) days' advance Notice of such action to City. Phrases such as "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company" shall not be included in the cancellation wording of any certificates or policies of insurance applicable to the City Parties under these Insurance Requirements.
- 3.5. *Waiver of Certain Claims.* Licensee shall cause each insurance carrier providing any Liability Insurance, Worker's Compensation Insurance, or Automobile Liability Insurance coverage under these Insurance Requirements to endorse their applicable policy(ies) with a Waiver of Subrogation (defined below) with respect to the City Parties, if not originally in the policy. To the extent Licensee obtains an insurance policy covering both the Licensee Parties and the City Parties and containing a Waiver of Subrogation, the Parties release each other from any Claims for damage to any Person or property to the extent such Claims are paid by the insurance carrier under such insurance policy. "**Waiver of Subrogation**" means and refers to a provision in, or endorsement to, any insurance policy, under which the carrier agrees to waive rights of recovery by way of subrogation against the City Parties for any loss such insurance policy covers.
- 3.6. *No Representation.* No Party makes any representation that the limits, scope, or forms of insurance coverage required by these Insurance Requirements are adequate or sufficient.

- 3.7. *No Claims Made Coverage.* None of the insurance coverage required by these Insurance Requirements, except Contractors Pollution Liability Insurance, may be written on a claims-made basis.
- 3.8. *Fully Paid and Non-Assessable.* All insurance maintained by Licensee in satisfaction of these Insurance Requirements shall be fully paid for and non-assessable.
- 3.9. *Separation of Insured.* All Liability Insurance, Contractors Pollution Liability Insurance, and Automobile Liability Insurance shall provide for separation of insured for Licensee and the City Parties. Insurance policies obtained in satisfaction of these Insurance Requirements may provide a cross-suits exclusion for suits between named insured Persons but shall not exclude suits between named insured Persons and additional insured Persons.
- 3.10. *Deductibles and Self-Insured Retentions.* All deductibles or self-insured retentions under insurance policies issued in satisfaction of these Insurance Requirements shall be declared to and approved by City. Licensee shall pay all such deductibles or self-insured retentions regarding the City Parties. Each insurance policy issued in satisfaction of these Insurance Requirements shall provide that, to the extent Licensee fails to pay all or any portion of a self-insured retention under such policy in reference to an otherwise insured loss, City may pay the unpaid portion of such self-insured retention, in City's sole and absolute discretion. All amounts paid by City toward self-insured retentions regarding insurance policies covering the City Parties under these Insurance Requirements shall be reimbursed to City by Licensee in the same manner that insurance costs are reimbursable to City from Licensee under Section 5 of these Insurance Requirements.
- 3.11. *No Separate Insurance.* Licensee shall not carry separate or additional insurance coverage concurrent in form or contributing in the event of loss with insurance coverage required by these Insurance Requirements unless the City Parties are made additional insured under such insurance coverage.
4. **Insurance Independent of Indemnification.** These Insurance Requirements are independent of the Parties' Indemnification and other obligations under this License Agreement and shall not be construed or interpreted in any way to satisfy, restrict, limit or modify the Parties' Indemnification or other obligations or to limit the Parties' liability under this License Agreement, whether within, outside or in excess of such coverage, and regardless of solvency or insolvency of the insurer issuing the coverage, nor shall the provision of such insurance preclude City from taking such other actions as are available to City under any other provision of this License Agreement or otherwise at law or in equity.
5. **City Option to Obtain Coverage.** During the continuance of an Event of Default arising from the failure of Licensee to maintain any insurance coverage required by these Insurance Requirements, City may, in City's sole and absolute discretion, purchase such required insurance coverage. City shall be entitled to immediate payment from Licensee of all premiums and associated reasonable costs paid by City to obtain such insurance coverage. Each amount becoming due and payable to City under this Section 5 that is not paid within fifteen (15) days after Notice from City with an explanation of the amounts owed, will accrue Default Interest

from the date incurred until paid. Election by City to purchase or not to purchase insurance coverage otherwise required by these Insurance Requirements to be carried by Licensee shall not relieve Licensee of any Default or Event of Default or Licensee's obligation to maintain all insurance coverage required by these Insurance Requirements.

EXHIBIT D
TO
TELECOMMUNICATIONS LICENSE AGREEMENT
(North County Dispatch Joint Powers Authority: Mt. Woodson Communications Complex)

CITY STANDARD CONTRACT PROVISIONS

1. **Licensee Certifications of Compliance.** By signing this License Agreement, Licensee agrees and certifies that Licensee is aware of, and will comply with, all the following requirements in performance of this License Agreement:

1.1. **Council Policy 100-04 Americans with Disabilities Act ("ADA") Requirements.** Licensee will comply with the City's ADA requirements under Council Policy 100-04, which is incorporated into this License Agreement by this reference. Licensee agrees that all subcontracts relating to this License Agreement or the License Area will contain the subcontractor's agreement to abide by the provisions of Council Policy 100-04.

1.2. **Equal Benefits Ordinance.** Unless an exception applies, Licensee shall comply with the "Equal Benefits Ordinance" codified in San Diego Municipal Code ("SDMC") section 22.4308.

1.3. **Equal Pay Ordinance.** Unless an exception applies, Licensee shall comply with the "Equal Pay Ordinance" codified in SDMC sections 22.4801 through 22.4809. Licensee shall certify in writing that it will comply with the requirements of the Equal Pay Ordinance. The Equal Pay Ordinance applies to any subcontractor who performs work on behalf of Licensee to the same extent as it would apply to Licensee. Licensee shall require all its subcontractors to certify compliance with the Equal Pay Ordinance in written subcontracts.

1.4. **Product Endorsement.** Licensee shall comply with Council Policy 000-41 concerning product endorsement requiring that any advertisement referring to City as a user of a good or service must have the prior written approval of the Mayor.

1.5. **Business Tax Certificate.** Unless City's City Treasurer determines in writing that Licensee is exempt from the payment of business tax, Licensee is required to obtain a City business tax certificate and provide a copy of such certificate to City before commencing the Licensee's Operations.

1.6. **Employment of City Staff.** Under City Council Policy 300-11, if Licensee employs an individual, who, within 12 months immediately preceding such employment, did, in the individual's capacity as a City officer or employee, participate in, negotiate with, or otherwise have an influence on the recommendation made to the Council in connection with the entry into this License Agreement, City, in its sole and absolute discretion, shall have the right to unilaterally and immediately terminate this License Agreement by notice to Licensee.

EXHIBIT E
TO
TELECOMMUNICATIONS LICENSE AGREEMENT
(North County Dispatch Joint Powers Authority: Mt. Woodson Communications Complex)

FACILITIES ACCESS PROCEDURES

The checked procedure set forth below is applicable to the Property.

[] **1. WATER SYSTEM PROPERTY ACCESS PROCEDURES**

1.1. Non-Emergency Access Procedure.

1.1.1. Telecommunications service providers (each, a “TSP”) are required to call the Public Utility Department SCADA Operator at (619) 527 - 7604 or (619) 527 – 7630 at least two (2) Business Days, not including weekends or holidays, in advance of its planned visit to schedule the requested access. At the time of the request, the TSP will also email Sr. Water Distribution Supervisor Jesus Ramos (jramos@sandiego.gov) and Water System Technician Supervisor Carl Gross (cgross@sandiego.gov) the completed PUD Telecom Service Provider Access Form attached to this License Agreement as **EXHIBIT I** that includes the following information: 1) name of the TSP; 2) date request form was submitted to City; 3) TSP contact name and cell phone number; 4) location for access; 5) access date and start time; 6) expected duration of access (hours, days, weeks); 7) list of names and employer of employees and subcontractors, and identify their employer(s) who will be accessing the site, and the primary contact name and phone number to confirm information or to reschedule access. City reserves the right to modify or replace the PUD Telecom Service Provider Access Form at any time, in City’s sole and absolute discretion. If a subcontractor will be accessing the site, also provide the name and cell phone number of that subcontractor contact.

1.1.2. The Water System Technician Supervisor (WST supervisor) will issue an SAP service request (SR) to assign a crew to escort and supervise the access. The WST Supervisor will provide the City crew with the completed PUD Telecom Service Provider Access Form authorizing visitor entry onto the facility. The WST Supervisor will verify the access request and has the discretion to deny entry (access should only be denied if the PUD Telecom Service Provider Access Form is incomplete or inaccurate, or the access request cannot be verified with the TSP).

1.1.3. The dispatched crew shall verify all visitors against the PUD Telecom Service Provider Access Form by checking for a valid company ID and driver’s license. Only those employees/contractors listed on the PUD Telecom Service Provider Access Form will be allowed to access the facility.

1.1.4. The dispatched crew shall complete the PUD Telecom Service Provider Access Form and return it to the WST Supervisor following completion of the access.

1.1.5. All water system property sites are alarmed with silent alarms and monitored twenty-four (24) hours per day by the public service dispatch center. When entering or leaving a building, call (619) 527-7660 or use the order wire dial #13 and identify yourself. Police respond to all unanswered alarms.

1.2. Emergency Access Procedure.

1.2.1. TSPs are required to call the Public Utility Department SCADA Operator at (619) 527-7604 or (619) 527-7630 to request emergency access. At the time of the request, the TSP will email the completed PUD Telecom Service Provider Access Form to the SCADA Operator (operator to provide email address to contractor), as well as to Sr. Water Distribution Supervisor Jesus Ramos (jramos@sandiego.gov) and Water System Technician Supervisor Carl Gross (cgross@sandiego.gov). The SCADA Operator has the discretion to verify the access request and to refuse entry (access should only be denied if the access request is not verified by the contact).

1.2.2. The SCADA Operator will contact the WST supervisor during normal working hours or dispatch a stand-by crew during non-normal working hours. During non-normal working hours, the SCADA Operator will issue an SAP service request (SR) to assign the stand-by crew to allow entry and to supervise the visitors. The SCADA Operator will provide the crew with the completed PUD Telecom Service Provider Access Form authorizing visitor entry into the facility.

1.2.3. The dispatched crew shall verify all visitors against the PUD Telecom Service Provider Access Form by checking for a valid company ID and driver's license. Only those employees/contractors listed on the PUD Telecom Service Provider Access Form will be allowed to access the facility.

1.2.4. The dispatched crew shall complete the PUD Telecom Service Provider Access Form and return it to the WST Supervisor following completion of the access.

[] 2. **POLICE DEPARTMENT FACILITY ACCESS PROCEDURES.**

2.1. Non-Emergency Access Procedures. For access to a Police Department facility, Licensee must contact [TO BE DETERMINED] at least 48 hours in advance to schedule a Police Department personnel escort at all times while Licensee personnel are on the Police Department facility. Licensee shall not have access to Police Department facilities at any time without a Police Department personnel escort. Availability of Police Department personnel to escort Licensee personnel is at the sole and absolute discretion of the Chief of Police or his or her designee. Police Department personnel will not always be available to escort Licensee personnel onto Police Department facilities. Licensee

personnel access to Police Department facilities shall only be allowed from 8:00 a.m. to 5:00 p.m. Monday through Thursday. Personnel performing work for Licensee on Police Department facilities must wear an identification badge (showing their name and employer) and safety equipment at all times, show a driver's license matching the identification badge, and provide a work order authorization from Licensee to show Police Department staff.

2.2. Emergency Access Procedures. If an emergency occurs with Licensee's Communications Equipment located on a Police Department facility and Licensee needs to perform work outside normal business hours (8:00 a.m. to 8:00 pm. Monday through Thursday), Licensee must contact [TO BE DETERMINED] by telephone at [TO BE DETERMINED] and request Police Department personnel be dispatched to the Police Department facility where the emergency has occurred. Personnel performing work for Licensee on Police Department facilities must wear an identification badge (showing their name and employer) and safety equipment at all times, show a driver's license matching the identification badge, and provide a work order authorization from Licensee to show Police Department staff.

[] 3. FIRE-RESCUE DEPARTMENT FACILITY ACCESS PROCEDURES.

3.1. Non-Emergency Access Procedures. For access to Fire-Rescue Department facilities during normal business hours (8:00 a.m. to 4:00 pm. Monday through Friday), Licensee must email its request to access Fire-Rescue Department facilities to sdfdfacilities.gov at least 48 hours in advance to schedule a Fire-Rescue Department personnel escort at all times while Licensee personnel are on Fire-Rescue Department facilities. In the e-mail message, Licensee must provide detailed information about the proposed scope of work, specific dates, and estimated duration of work on each date. Each request to access a Fire-Rescue Department facility will be distributed to Fire-Rescue Department Logistics Division staff that oversee construction and maintenance projects and communications equipment projects for all Fire-Rescue Department facilities. Once the request and work have been approved, Fire-Rescue Department personnel will be assigned to assist Licensee with access to the facility. Licensee shall not have access to a Fire-Rescue Department facility at any time without a Fire-Rescue Department personnel escort. Availability of Fire-Rescue Department personnel to escort Licensee personnel is at the sole and absolute discretion of the Fire Chief or his or her designee. Fire-Rescue Department personnel will not always be available to escort Licensee personnel onto Fire-Rescue Department facilities. Except in emergency situations (addressed below), Licensee personnel access to Fire-Rescue Department facilities shall only be allowed from 8:00 a.m. to 5:00 p.m. Monday through Friday. Personnel performing work for Licensee on Fire-Rescue Department facilities must wear an identification badge (showing their name and employer) and safety equipment at all times, show a driver's license matching the identification badge, and provide a work order authorization from Licensee to show Fire-Rescue Department staff.

3.2. Emergency Access Procedures. If an emergency occurs with Licensee's Communications Equipment located on a Fire-Rescue Department facility and Licensee

needs to perform work outside normal business hours (8:00 a.m. to 4:00 pm. Monday through Friday), Licensee must contact Station 38 Work Control by telephone at 619-525-8540 and request Fire-Rescue Department personnel be dispatched to the Fire-Rescue Department facility where the emergency has occurred. Station 38 Work Control will contact the Fire-Rescue Department Emergency Command Dispatch Center ("ECDC") and a call will go out to the on-duty Fire-Rescue Department personnel responsible for calls after hours to assist with emergency access to the Fire-Rescue Department facility. Personnel performing work for Licensee on Fire-Rescue Department facilities must wear an identification badge (showing their name and employer) and safety equipment at all times, show a driver's license matching the identification badge, and provide a work order authorization from Licensee to show Fire-Rescue Department staff.

[] **4. PARKS AND RECREATION PROPERTY ACCESS PROCEDURES.**

4.1. Non-Emergency Access Procedure.

4.1.1. At least three (3) business days, not including weekends or holidays, in advance of its planned visit, each TSP is required to schedule the requested access by e-mailing Clayton "Wally" Walsten ("**P&R Contact**") at Cwalsten@sandiego.gov the completed P&R Telecom Service Provider Access Form attached to this License Agreement as **EXHIBIT H** that includes the following information: 1) name of the TSP; 2) date request form was submitted to City; 3) TSP contact name and cell phone number; 4) location for access; 5) access date and start time; 6) expected duration of access (hours, days, weeks); 7) list of names and employer of employees and subcontractors, and identify their employer(s) who will be accessing the site, and the primary contact name and phone number to confirm information or to reschedule access. City reserves the right to modify or replace the P&R Telecom Service Provider Access Form at any time, in the City's sole and absolute discretion. If a subcontractor will be accessing the site, also provide the name and cell phone number of that subcontractor contact.

4.1.2. The P&R Contact will assign a crew to escort and supervise access. The P&R Contact will provide the City crew with the completed P&R Telecom Service Provider Access Form authorizing visitor entry onto the facility. The P&R Contact will verify the access request and has the discretion to deny entry (access should only be denied if the P&R Telecom Service Provider Access Form is incomplete or inaccurate, or the access request cannot be verified with the TSP).

4.1.3. The dispatched crew shall verify all visitors against the P&R Telecom Service Provider Access Form by checking for a valid company ID and driver's license. Only those employees/contractors listed on the P&R Telecom Service Provider Access Form will be allowed to access the facility.

4.1.4. The dispatched crew shall complete the P&R Telecom Service Provider Access Form and return it to the P&R Contact following completion of the access.

4.2. Emergency Access Procedure.

4.2.1. TSPs are required to call contact [TO BE DETERMINED] to request emergency access. At the time of the request, the TSP will email the completed P&R Telecom Service Provider Access Form to the P&R Contact. The P&R Contact has the discretion to verify the access request and to refuse entry (access should only be denied if the access request is not verified by the contact).

4.2.2. [TO BE DETERMINED] will contact [TO BE DETERMINED] during normal working hours or dispatch a stand-by crew during non-normal working hours. During non-normal working hours, [TO BE DETERMINED] will assign the stand-by crew to allow entry and to supervise the visitors. [TO BE DETERMINED] will provide the crew with the completed P&R Telecom Service Provider Access Form authorizing visitor entry into the facility.

4.2.3. The dispatched crew shall verify all visitors against the P&R Telecom Service Provider Access Form by checking for a valid company ID and driver's license. Only those employees/contractors listed on the P&R Telecom Service Provider Access Form will be allowed to access the facility.

4.2.4. The dispatched crew shall complete the P&R Telecom Service Provider Access Form and return it to [TO BE DETERMINED] following completion of the access.

[] 5. LIBRARY PROPERTY ACCESS PROCEDURES.

5.1. Non-Emergency Access Procedures. For access to a Library Department facility, Licensee must contact Library Technical staff by email at Library_IT_Support@sandiego.gov at least 48 hours in advance to schedule a Library Department personnel escort at all times while Licensee personnel are on the Library Department facility. Licensee shall not have access to Library Department facilities at any time without a Library Department personnel escort. Availability of Library Department personnel to escort Licensee personnel is at the sole and absolute discretion of the Library Department Director or his or her designee. Library Department personnel will not always be available to escort Licensee personnel onto Library Department facilities. Licensee personnel access to Library Department facilities shall only be allowed from 8:00 a.m. to 5:00 p.m. Monday through Friday. Personnel performing work for Licensee on Library Department facilities must wear an identification badge (showing their name and employer) and safety equipment at all times, show a driver's license matching the identification badge, and provide a work order authorization from Licensee to show Library Department staff.

5.2. Emergency Access Procedures. If an emergency occurs with Licensee's Communications Equipment located on a Library Department facility and Licensee needs to perform work outside normal business hours (8:00 a.m. to 8:00 pm. Monday through Friday), Licensee must contact Public Works Dispatch/Station 38 by telephone at 619-527-7500 and request the appropriate City personnel with building access be dispatched to the Library Department facility where the emergency has occurred. Personnel performing work for Licensee on Library Department facilities must wear an identification

badge (showing their name and employer) and safety equipment at all times, show a driver's license matching the identification badge, and provide a work order authorization from Licensee to show City staff.

[X] **6. INFORMATION TECHNOLOGY PROPERTY ACCESS PROCEDURES.**

6.1. Non-Emergency Access Procedures. For access to an Information Technology ("IT") Department facility, Licensee must contact the WSD Maintenance Control Center (MCC) by telephone at (619) 525-8673 at least 48 hours in advance to schedule an IT Department personnel escort at all times while Licensee personnel are on the IT Department facility. Licensee shall not have access to IT Department facilities at any time without an IT Department personnel escort. Availability of IT Department personnel to escort Licensee personnel is at the sole and absolute discretion of the IT Department Director or his or her designee. IT Department personnel will not always be available to escort Licensee personnel onto IT Department facilities. Licensee personnel access to IT Department facilities shall only be allowed from 8:00 a.m. to 5:00 p.m. Monday through Thursday. Personnel performing work for Licensee on IT Department facilities must wear an identification badge (showing their name and employer) and safety equipment at all times, show a driver's license matching the identification badge, and provide a work order authorization from Licensee to show IT Department staff.

6.2. Emergency Access Procedures. If an emergency occurs with Licensee's Communications Equipment located on an IT Department facility and Licensee needs to perform work outside normal business hours (8:00 a.m. to 8:00 pm. Monday through Thursday), Licensee must contact the WSD Maintenance Control Center (MCC) by telephone at (619) 525-8673 and request access to the IT Department facility where the emergency has occurred. All sites are alarmed with silent alarms and monitored twenty-four (24) hours per day by the Public Works Dispatch Center. When entering or leaving a site, personnel performing work for Licensee must call (619) 527-7660 and specifically identify themselves. Police respond to all unanswered alarms. Personnel performing work for Licensee on IT Department facilities must wear an identification badge (showing their name and employer) and safety equipment at all times, show a driver's license matching the identification badge, and provide a work order authorization from Licensee to show IT Department staff.

EXHIBIT F
TO
TELECOMMUNICATIONS LICENSE AGREEMENT
(North County Dispatch Joint Powers Authority: Mt. Woodson Communications Complex)

RADIO FREQUENCY INTERFERENCE STANDARDS

1. Interference. Prior to the Effective Date or at any time during the Term of this License Agreement, Licensee may be required to provide an intermodulation report ("**Report**") to City. This Report shall include the calculation parameters used to compile the Report, all intermodulation, a brief description of the results of the intermodulation calculations; a list of possible interference situations that may result from the proposed Communications Equipment; transmission frequencies that are currently being operated at the Property, and similar or other relevant data from other permittees/lessees/users operating on-site. The information required to compile the Report, including intermodulation parameters, and currently known transmission frequencies at the Property may be obtained from City's Department of IT, Wireless Services Division ("**WSD**"). City is not responsible for any omitted data provided for the purpose of creating the Report. The Report shall be provided to:

City of San Diego
Department of IT
Wireless Services Division (WSD)
Attention: Senior Communications Engineer
1220 Caminito Centro
San Diego, CA 92102

1. City of San Diego Land Radio/Electronic Use "ON THE AIR" Test Instructions and Procedures. For the purpose of confirming interference situations calculated by the Report and for the discovery of any other actual interference situations, on-premises, pre-installation, or pre-use tests may be required. The tests will determine whether or not radio frequency interference or degraded performance will result to any existing authorized radio/electronic type uses at the Property.

1.1. *Pre-Installation or Pre-Use Testing.*

- (1) Licensee shall notify all permittees/lessees/users at the Property of the tests and details of the tests, at least fourteen (14) calendar days in advance of the test. A listing of all permittees/lessees/users operating at the Property may be obtained from City and used to compile a notification list.
- (2) The notification shall be in the form of a letter to each listed permittee/lessee/user giving a technical data summary of the test and shall specify the date and hour the test will start. The letter of notification shall request the permittees/lessees/users to have a qualified representative present for the test to observe for possible interference problems and with authority to sign an interference or noninterference certification on behalf

of the permittee/lessee/user. Technical Data Summary and Test Results Certification sheets are included below.

- (3) A copy of these instructions, "City of San Diego Radio/Electronic Land Use On-The-Air Test Instructions and Procedures" shall be attached to each notification, and it shall be noted in the notification letter.
- (4) Notification to permittees/lessees/users shall be sent via U.S. Mail, pre-paid First-Class postage, certified return receipt requested, or hand delivered.
- (5) The notification letter to the WSD Senior Communications Engineer shall include a list of all permittees/lessees/users notified.
- (6) Following the completion of the tests, Licensee shall provide a letter to the WSD Senior Communications Engineer stating the test results obtained from each permittee/lessee/user participating in the test and a list of those permittees/lessees/users who did not respond.
- (7) If a notified permittee/lessee/user fails to send a qualified representative to observe and participate in the tests, it will be assumed by City that the permittee/lessee/user has assured itself that their operations will not be affected.
- (8) It shall be the responsibility of Licensee to make complete arrangements and conduct all tests in accordance with applicable Federal/FCC Rules and Regulations. In accordance with FCC OET Bulletin 65, Licensee shall provide a Baseline MPE RF report to the WSD Senior Communications Engineer within forty-five (45) days after the Effective Date.

b. On-The-Air Tests - Technical Details. Pre-installation or pre-use on-the-air tests shall be conducted by the Licensee under the following technical conditions:

- (1) The Licensee's transmitting and/or receiving equipment shall be of the type planned for final use at the Property.
 - (a) The transmitted RF power shall be the maximum to be used and authorized at the Property.
 - (b) On-the-air transmitter tests shall include the use of full allowable modulation.
 - (c) Antenna height(s), location(s) and type(s) shall be the same or comparable to the final installation plan.
- (2) Tests shall include on-the-air operation of all participating transmitter(s) and receiver(s) in all possible combinations with the Licensee's electronic equipment.

- (3) All tests shall include testing with all frequencies planned for use by the Licensee at the Property.

c. Radio Frequency Interference to City Radio Equipment. The radio equipment use proposed by Licensee shall not directly or indirectly result in degraded technical performance of the City's existing radio equipment installed at the Property or used in the general area. Resulting degraded technical performance in this instance will include, but is not limited to:

- (1) Detectable or measurable received intermodulation;
- (2) Audio distortion or noise; and
- (3) Receiver blocking.

d. Modifications to Equipment. Licensee shall notify the City prior to modifications to transmitting equipment that will change effective radiated power, transmitter frequency, transmitter modulation, or transmitter spurious and harmonic emissions. These modifications may require retest using this "ON THE AIR" testing procedure and the newly proposed equipment.

e. Resulting Interference. Should an interference problem occur at the Property or in the nearby surrounding area as a result of Licensee's newly installed, retuned, or modified Communications Equipment, Licensee shall initiate mutually agreeable actions among the affected parties to mitigate or resolve the interference problem. City may recognize the right of prior authorized permittees/lessees/users and withhold consent or disallow use of a new, retuned, or modified installation pending settlement of the interference problems between Licensee and other authorized users. City shall not be obligated for any loss, financial or otherwise, which may be incurred by Licensee as a result of City withholding consent and Licensee waives any claim for expense or loss which Licensee might incur as a result of City withholding consent.

TECHNICAL DATA SUMMARY

One form to be completed per transmitter and supplied to all permittees/lessees/users operating at the facility.

DATE _____

LOCATION _____

APPLICANT _____

CALL SIGN _____ CONTACT NAME _____ PHONE _____

TRANSMITTER

RECEIVER

Manufacturer _____ Manufacturer _____

Model _____ Model _____

Emission _____

Radiated ERP _____ Watts

Transmit Frequency _____

Receiver Frequency _____

CTCSS or DCS

1. _____

1. _____

1. _____

2. _____

2. _____

2. _____

3. _____

3. _____

3. _____

4. _____

4. _____

4. _____

ANTENNA

TRANSMIT CAVITY FILTER ISOLATOR

Make _____

Make _____

Make _____

Model/Type _____

Gain _____ dBd

Azimuth _____

Height/AGL _____

REMARKS:

TEST RESULTS CERTIFICATION

Top section is to be completed and supplied to all permittees/lessees/users operating at the Property.

Bottom section is to be completed by each existing Property permittee/lessee/user after testing is finished.

SUBJECT: "ON THE AIR" interference testing

SITE LOCATION _____

FREQUENCY _____

DATE OF TEST _____

TIME OF TEST _____

PROPOSED TRANSMITTER OWNED BY _____

TEST PERFORMED BY _____

Permittee/Licensee/User:

"On-the-air" interference testing has been completed at the above stated Property location. A qualified representative was present for the test to observe for possible interference problems.

With regard to the above test, this is to certify that objectionable radio frequency interference did ☐ did not ☐ result during this test.

Details of interference: (if applicable)

Proposed technical resolution: (if applicable)

(Licensee)

(Licensee's Representative)

(Date)

**EXHIBIT G
TO
TELECOMMUNICATIONS LICENSE AGREEMENT
(North County Dispatch Joint Powers Authority: Mt. Woodson Communications Complex)**

INSTALLATION STANDARDS

- a. All waveguide and coaxial cable runs shall be installed and supported on the tower, cable ladder, and ice bridges using equivalent hardware and methods to those currently used on site.
- b. All waveguide and coaxial cable shall be installed in a neat manner with sweeping bends and straight runs on the tower cable ladder and ice bridges.
- c. Three (3) ground kits shall be installed as follows: Near the antenna, where the coax transitions to horizontal at the junction between the cable ladder and ice bridge, and where the cable enters the building. Grounds shall be installed to shunt any lightning directly to earth ground.
- d. All antenna mounts and hardware utilized on towers and structures shall be hot-dip galvanized or stainless steel and of standard manufacture.
- e. All drawings submitted for installation approval shall clearly show the following items:
 - (1) A plot plan of the site to include the building and tower location with the proposed equipment shown in its proposed location.
 - (2) A tower drawing clearly showing the location of the proposed antenna and the routing of the waveguide or coax cable specifying grounding locations.
 - (3) If equipment is to be located inside the building, a drawing shall be provided showing the rack location of the equipment, an elevation drawing of the rack, and a plot plan of the equipment installed in the rack.
 - (4) A list of all equipment to be installed shall be provided. This list shall include the type and manufacturer of equipment, RF frequency, RF power, modulation type, RF filtering, antenna type, antenna model, antenna gain and azimuth, waveguide and/or coax cable length and AC power requirement including any HVAC.
- f. All transmitters shall have necessary protection to eliminate any RF degradation of the receive signal to any other user on the site, such as filtering and isolators.
- g. To minimize the number of antennas and waveguide or coax cables to be mounted on the tower, transmitter combining will be required whenever possible.

- h. All cabinets and racks shall be grounded to the site grounding system.
 - i. Should the City determine that a tower loading analysis is required, the requesting user shall have the tower analysis done at its expense and provide City with information on how the additional load to the tower will affect tower structural integrity.
 - j. All tower climbing shall be done in compliance with Law.
 - k. Hazardous RF radiation levels may be encountered when climbing on existing antenna structures. Refer to FCC OET Bulletin 65. When it is necessary to climb on the antenna structure for installation or maintenance, contact WSD at (619) 525-8673 for shutdown scheduling and procedures. Any equipment installed on the Site may at times require shutdown to allow maintenance personnel to access the antenna structure.
 - l. All trash and debris shall be removed from the site at the end of each workday and upon completion of the project.
 - m. Licensee shall provide the City with Licensee's shutdown procedures for Licensee's Communications Equipment and 24-hour contact names and telephone numbers. Should changes be made to the contact names and telephone numbers, the City shall be Notified at least ten (10) days before the effective date of the change.
 - n. A detailed construction schedule shall be provided to WSD prior to any installation work.
- Installations must comply with the most current industry standards and codes.

**EXHIBIT H
TO
TELECOMMUNICATIONS LICENSE AGREEMENT
(North County Dispatch Joint Powers Authority: Mt. Woodson Communications Complex)**

P&R TELECOM SERVICE PROVIDER SITE ACCESS FORM

[Attached behind this cover page]

Telecom Service Provider Site Access Form

Email this completed form to Clayton "Wally" Walsten at least three working days before the planned visit.
Email: Cwalsten@sandiego.gov

Contact Information		
Telecom Service Provider:		Date:
Access Location:	Access Date:	
Access Time:	Expected Duration:	
Is this a building mounted facility? Yes ☐ No ☐		
Contact Name:	Contact Phone No.:	
Was contact verified? Yes ☐ No ☐	Initials:	
Purpose of Visit?		

Contractors need a valid California Driver's License, proof of insurance and company ID.		
Employee Name:	Company Name:	ID Verified:

To Be Completed By Attending Crew/Contractor

Access Date:	Start Time:	End Time:
Comments:		
Please attach photos of the site before and after work.		

EXHIBIT 1

TO

(North County Dispatch Joint Powers Authority: Mt. Woodson Communications Complex)

PUD TELECOM SERVICE PROVIDER ACCESS FORM

[Attached behind this cover page]



Telecom Service Provider Access Form

Email this completed form to Jesus Ramos (Jramos@sandiego.gov), and Carl Gross (Cgross@sandiego.gov), and call SCADA (Supervisory Control and Data Acquisition) at 619- 527-7604 or 619-527-7630 at least two business days before the planned visit.

Contact Information

Telecom Service Provider:		Date:
Access Location:		Access Date:
Access Time:		Expected Duration:
Contact Name:	Contact Phone Number:	
Was Contact Verified: Yes / No	Initials:	
Purpose of Visit:		

Contractors need both a California Driver's License and a Company ID

Employee Name:	Company:	ID Verified:

To Be Completed By Attending Crew

Access Date:	Start Time:	End Time:
Comments:		

EXHIBIT J
TO
TELECOMMUNICATIONS LICENSE AGREEMENT
(North County Dispatch Joint Powers Authority: Mt. Woodson Communications Complex)

ACCESS ROAD



Access Road

EXHIBIT K
TO
TELECOMMUNICATIONS LICENSE AGREEMENT
(North County Dispatch Joint Powers Authority: Mt. Woodson Communications Complex)

MAINTENANCE COST SHARING

1. Licensee's Share of Maintenance Expenses. Licensee shall pay to Licensor, in addition to the License Fee, Licensee's Share (defined in Section 2 of this **EXHIBIT K**) of all Maintenance Expenses (defined in Section 3 of this **EXHIBIT K**) during each Year. Licensee's Share of Maintenance Expenses is payable annually in advance on the same day as the License Fee is due. The amount of each such payment will be based on Licensor's estimate of the annual Maintenance Expenses for the Year. Within ninety (90) days after the last day of each Year, Licensor shall deliver to Licensee a reasonably detailed written statement showing Licensee's Share of the actual Maintenance Expenses for the preceding Year. If Licensee's payments for Maintenance Expenses during a particular Year based on Licensor's estimate of such expenses exceed Licensee's Share of actual Maintenance Expenses for such Year, Licensor shall credit the amount of such overpayment against Licensee's payments towards Licensee's Share of Maintenance Expenses in the next Year. If Licensee's payments for Maintenance Expenses during such Year based on Licensor's estimate of such expenses were less than Licensee's Share of actual Maintenance Expenses for such Year, Licensee shall pay to Licensor the amount of the deficiency within ten (10) days after Notice to Licensee of the deficiency amount. The inclusion of improvements, facilities, or services in the definition of "Maintenance Expenses" shall not impose an obligation on Licensor to either have such improvements or facilities or to provide such services unless the Property already has the improvements or facilities, Licensor already provides the services at the Property, or Licensor expressly agrees elsewhere in this License Agreement to provide the improvements, facilities, or services.

2. Licensee's Share. Eight percent (0.08).

3. Maintenance Expenses. All costs relating to the ownership and operation of the Property paid or incurred by Licensor, or for which Licensor is obligated, including the following:

3.1. Costs relating to the operation, repair, and maintenance, in neat, clean, good order and condition, or replacement as reasonably necessary, of the following:

3.1.1. All roads and driveways serving the Property that are maintained or repaired by Licensor or at Licensor's expense;

3.1.2. Water, gas, sewage, electricity, air conditioning, heating and other utilities, including all usage, service, hook-up, connection, availability or standby fees or charges in reference to such utilities, the utility costs, and all utilities not separately metered;

3.1.3. Maintenance of signs, whether located on or off the Property;

3.1.4. Landscaping, including sloping, ground maintenance, or weed control;

3.1.5. Parking areas, loading and unloading areas, trash areas, roadways, parkways, walkways, driveways, parking lot, road, or other striping, bumpers, fences and gates, roofs, exterior walls of buildings, building systems, roof drainage systems, curbs, gutters, sidewalks, drainage and irrigation ditches, conduits, pipes or canals serving the Property;

3.1.6. Antenna tower or Communications Equipment shelter, including roof, exterior walls/structure, or floor;

3.1.7. Fire detection or fire suppression equipment serving the Property;

3.1.8. Mechanical equipment including any automatic door openers, lighting fixtures (including replacement of poles, tubes and bulbs) or other equipment used for operation of maintenance of the Property;

3.1.9. All temporary or permanent utility systems for the Property, including heating, ventilating and air conditioning systems (HVAC systems), gas system(s), plumbing system(s), electrical equipment or water pumping system(s);

3.1.10. Emergency water or sprinkler main system(s) or security alarm system(s) serving the Property;

3.1.11. Portable restrooms located on the Property and supplies for restrooms located on the Property;

3.1.12. All other areas, facilities, or improvements used or useful in connection with the maintenance, use, or operation of, whether located within or outside of, the Property.

3.2. The costs of:

3.2.1. Repair, maintenance or cleaning of the Property;

3.2.2. Trash disposal, pest control, security, or fire protection services for the Property;

3.2.3. Snow removal services reasonably necessary for use or operation of the Property;

3.2.4. Management fees paid to Third Parties for management of the Property;

3.2.5. Premiums for insurance maintained by Licensor covering casualties to the Property or other liability relating to the ownership, use, or occupancy of the Property and each deductible portion of an insured loss concerning the Property;

3.2.6. Maintenance for wooded areas, retention ponds, wetlands, rivers and riverbank areas reasonably required for use or operation of the Property;

3.2.7. All capital improvements to the Property, provided that Licensor shall allocate the cost of each such capital improvement over a 10-year period and Licensee shall only

be obligated to pay Licensee's Share of 1/10th of the cost of such capital improvement each Year. Licensee shall pay Default Interest on the unamortized balance but may prepay its obligation at any time.

3.3. Reasonable depreciation of capital improvements and equipment used in the operation or maintenance of the Property.

3.4. Reserves set aside for maintenance, repair, or replacement of equipment used in operation or maintenance of the Property or capital improvements to the Property.